

Vol.III
4th May, 1955 (Wednesday)

LOK SABHA DEBATES

[Part I—Questions and Answers]

VOLUME III, 1955

(20th April to 7th May, 1955)



सत्यमेव जयते

NINTH SESSION, 1955.

(Vol. III contains Nos. 41—52)

**Lok Sabha Secretariat
NEW DELHI**

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LOK SABHA DEBATES Dated: 06.02.201
(Part I—Questions and Answers)

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LOK SABHA

Wednesday, 4th May, 1955

*The Lok Sabha met at Half Past Ten
of the Clock*

[MR. DEPUTY-SPEAKER in the Chair]

ORAL ANSWERS TO QUESTIONS

Short Notice Questions and Answers

STRIKE BY KOLAR GOLD-FIELDS WORKERS

S.N.Q. No. 11. Shri T. B. Vittal Rao: Will the Minister of Labour be pleased to state:

(a) whether it is a fact that the workers of gold mines in the Kolar Gold Fields have gone on a strike since the 17th April, 1955 consequent on the refusal by the management of the Company to implement the award of the Industrial Tribunal;

(b) if so, whether any conciliation proceedings have been started; and

(c) the steps Government propose to take to bring about the settlement of the dispute?

The Deputy Minister of Labour (Shri Abid Ali): (a) About 10,000 workers of the gold mines in Kolar Gold Fields went on strike from the 16th April, 1955 over the issue of immediate revision of wages rates of certain categories of workers. According to the Tribunal's award, this revision was left to be settled by the mines management in consultation with the representatives of the workers. As directed by the Tribunal, the management was prepared to grant a uniform increase of annas three in the existing rates of wages but the workers demanded an immediate revision of wages rates. The

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management declined to do so as their appeal against the wage increase granted by the Tribunal was pending before the Labour Appellate Tribunal.

(b) and (c). At the interventior of the Regional Labour Commissione. (Central), Madras, a settlement was reached to the effect that the strike should be called off and direct negotiation of all outstanding issues resumed. The workers accordingly resumed work on the 27th April, 1955.

Shri T. B. Vittal Rao: May I know when the Conciliation Officer and the Regional Labour Commissioner went to Kolar? Is it only after the strike or did they go before the strike and try to avert the strike?

Shri Abid Ali: On the eve of the strike they went there.

Shri T. B. Vittal Rao: What do Government propose to do on the findings of the Kolar Gold-field Enquiry Committee that the management of the company have not been working the Mines in the interests of the country?

Shri Abid Ali: That is entirely a separate question. That does not arise out of this.

FORCED LANDING OF AEROPLANES

S.N.Q. No. 12, Shri S. G. Parikh (on behalf of Dr. J. N. Parekh): Will the Minister of Communications be pleased to state:

(a) whether it is a fact that the Calcutta bound Skymaster and the Rajkot bound Dakota had to make forced landing on the 23rd April, 1955 which caused anxiety to passengers;

(b) if so, the causes that led to this forced landing; and

(c) the measures that Government propose to take to improve the efficiency in view of the frequency of such forced landings and engine troubles?

The Deputy Minister of Communications (Shri Raj Bahadur): (a) and (b). A Skymaster on a scheduled service from Bombay to Calcutta on the 23rd April, 1955 force-landed at Aurangabad as one of its engines failed in flight and the propeller could not be feathered out. The aircraft made a landing at Aurangabad. A relief aircraft was sent from Bombay to carry the passengers to their destination. The passengers were well looked after during their enforced stay at Aurangabad and there was a total delay of about six hours in the flight arriving its destination.

Regarding the incident to a Dakota at Rajkot aerodrome, the Dakota which was on a scheduled service from Bhuj to Bombay, overshot the runway in gusty wind conditions while making its scheduled halt at Rajkot. The aircraft halted on soft ground and was bogged. It had to be towed back and the service departed from Rajkot after a delay of about two hours. Government have no information of any harassment caused to passengers.

(c) Every effort is made to prevent engine troubles and accidents. The measures taken by Government with a view to preventing engine failures, accidents etc. have been explained to the Sabha from time to time. However, I lay on the Table of the Lok Sabha a statement indicating these measures. [See Appendix XIII, annexure No. 11].

Shri T. B. Vittal Rao: As per item (6) of the statement laid on the Table of the House, it is stated that the maintenance schedule has been revised with a view to increase the margin of safety and that they are more elaborate in detail than those obtaining in U.K. and U.S.A. Could I know if a copy of the schedules that are obtaining in U.K. and U.S.A. will be laid on the Table of the House?

Shri Raj Bahadur: I will try to do so. So far as the actual modification in the schedule is concerned, I may give only one example. For instance, the between-overhaul period for Hercules engines has been reduced from 900 hours to 850 hours. Similarly other steps have been taken to revise the schedules in order to ensure the elimination of all mechanical defects.

Shri G. S. Singh: May I know when the Government propose to revise the licensing of pilots and ground engineers in accordance with the standards laid down by the International Civil Aviation Organisation?

Shri Raj Bahadur: As the hon. Member is aware, we had appointed a Committee, known as the Master Committee, and they also went into this question and advised us in regard to this question. We have taken some steps which I shall be able to indicate on a separate question.

Dr. Rama Rao: May I know whether the Lokur Committee has submitted its report on the Nagpur air crash?

Shri Raj Bahadur: That is a separate question altogether and I will not be able to answer it now.

Mr. Deputy-Speaker: Yes, that is a different matter altogether.

Shri Joachim Alva: Where are the engines sent for checking up and overhaul? Do they go to the Hindustan Aircraft Factory in Bangalore or do Government have a special central workshop near at Bombay as at Calcutta for the Bengal area?

Shri Raj Bahadur: We have got one at Delhi and the other at Calcutta. At Bombay, we have got the Air India International's workshop.

Shri M. S. Gurupadaswamy: Will you please permit me to put my question—Short Notice Question?

Mr. Deputy-Speaker: The hon. Member was not present when I called his question. Today, instead of calling the questions first, as is usual, I called the hon. Prime Minister to make his

statement because he wanted to go away early, and so the hon. Member had some more time in that way. He was given notice that he should be here at 10-30 to put his question. His question was called and he has missed the bus. I cannot help it. However, I shall arrange to send a copy of the written answer to the hon. Member.

Shri M. S. Gurupadaswamy: Can it be taken up tomorrow?

Mr. Deputy-Speaker: Another notice will have to be given. I cannot call upon any hon. Minister to be present here except in the usual course. If a separate notice is given, let us see.

WRITTEN ANSWERS TO QUESTIONS

Short Notice Question and Answer DETENTION OF DR. LOHIA

S.N.Q. No. 13. Shri M. S. Gurupadaswamy: Will the Minister of Home Affairs be pleased to state:

(a) whether it is a fact that Dr. Ram Manohar Lohia and six other Praja

Socialist Party workers were released by the Judicial Commissioner of Manipur on the 26th April, 1955 following *habeas corpus* petitions filed on their behalf;

(b) whether it is also a fact that Dr. Lohia and Shri Achaw Singh were re-arrested by the Police on the same day just outside the jail gates under the Preventive Detention Act; and

(c) if so, the grounds on which they have been detained?

The Minister of Home Affairs (Pandit G. B. Pant): (a) and (b). Yes.

(c) Grounds of detention have been furnished by the District Magistrate to Dr. Lohia and Shri Achaw Singh, as required by Section 7 of the Preventive Detention Act, 1950; they can make a representation against the Magistrate's orders to the State Government and the Advisory Board.

Vol. IV
04th May, 1955 (Wednesday)

LOK SABHA DEBATES

(Part II—Proceedings other than Questions and Answers)



(Vol. IV contains Nos. 46—58)

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NEW DELHI

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LOK SABHA

Wednesday, 4th May, 1955

The Lok Sabha met at Half Past
Ten of the Clock

[MR. DEPUTY-SPEAKER in the Chair]

QUESTIONS AND ANSWERS

(See Part I)

MOTIONS FOR ADJOURNMENT

DEPORTATION OF CERTAIN SATYAGRAHIS
BY PORTUGUESE AUTHORITIES

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): Sir, I beg to make the following statement in regard to certain recent occurrences in Goa. Government are much concerned at recent developments in Goa which indicate a deepening of the crisis there. The Portuguese authorities have not only lost all faith in the Goan people, but suspect Goan police officials also, and are relying more on the military. Many reports and rumours reach us about events in Goa. It is not always possible to confirm the reports received as the Portuguese authorities endeavour to prevent news from leaking out.

I give below an account of recent developments in Goa based on what we consider reliable information.

The Satyagraha Movement which was launched on the 15th August, 1954, took the form of batches of Goans from inside and outside Goa offering satyagraha on selected days. As a result, satyagraha was offered on the 26th of January, 1955, Republic Day, and the 17th of February, Gaitonde Day. The 6th of April was

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fixed by the Goa National Congress as a day on which this organisation was to hold its open session in Mapuca, inside Goa. At this session Shrimati Sudha Joshi, the newly elected President, was to read out her presidential address. As the satyagraha on Republic Day and Gaitonde Day had produced considerable enthusiasm, the arrests numbering over 135, despite the precautionary measures taken by the local authorities, the Portuguese Government mobilised their entire military and police forces for the 6th April. There was a considerable show of force in order to intimidate the people. The Army was called out and in places like Partagal and Canacona, even tanks and artillery were on display. Preventive arrests of nationalist workers particularly in Margao, Mapuca and Panjim were made. In Siolim two girls were arrested and in Canacona six girls were arrested. On the nationalist side there was considerable activity resulting in the display of Goa Congress posters and Indian National flags all over Goa.

No open session could take place at Mapuca, but Shrimati Sudha Joshi, President-elect of the National Congress of Goa read out part of the presidential address. She and over 40 satyagrahis were arrested in Margao and Mapuca on the 6th. The total number of known arrests from the 6th to 20th April is 61. According to reports, Shrimati Sudha Joshi was abused and ill-treated during interrogation. Three of the male satyagrahis were beaten in public.

Later reports indicate that on the 6th April, military had to be called out in Margao to disperse a crowd of about 2,000 who had gathered to witness the satyagraha. Ruthless methods verging on barbarity were

[Shri Jawaharlal Nehru]

adopted against the satyagrahis. According to latest reports, a critical situation is developing in Margao, Mapuca and Canacona. On April 24th, two policemen were arrested in Bicholim for allegedly helping Goan Nationalists. The Portuguese authorities, distrusting the Goan police force, are making increasing use of the military.

On the 21st and 31st March, and 18th, 21st and 27th April, 1955, the Military Tribunal passed following sentences on Goan satyagrahis arrested on the 15th August and in September, 1954:

1 to 28 years deportation or 20 years R.I.

(Shri Anthony De Souza)

5 to 8 years R.I.

10 to 7 years R.I.

8 to 6 years R.I.

6 to 5 years R.I.

11 to 4 years R.I.

4 to 3 years R.I.

1 to 1 year R.I.

In addition to the above, a political suspect arrested in July, 1954, was sentenced to 4 years imprisonment on the 10th March, 1955. A Goan Customs guard was also sentenced to 4 years R.I. on the 21st March for having surrendered to the satyagrahis who hoisted the Indian National Flag on the Terekhol Fort on the 15th August, 1954.

Only one of the satyagrahis sentenced to 3 years R.I. claimed to be Indian by birth. On enquiries it has been found that his parents are Goans. About 86 Indian satyagrahis have been arrested by Portuguese authorities since June 1954 as against more than 320 known arrests of Goan satyagrahis. Of the 86 Indian satyagrahis, 59 were released early this year and 27 are in custody and are still to be tried.

On receipt of press despatches on the 21st April, that 32 satyagrahis

sentenced by the Military Tribunal to the terms of imprisonment stated above, have been deported to Lourenço Marques in Portuguese East Africa, immediate inquiries were instituted. According to information available, about 52 long-term criminal prisoners were removed to a penal settlement at Diu, a Portuguese island off Saurashtra by Portuguese sloop 'Alfonso Albuquerque' on the night of the 17th April. While there are persistent rumours that satyagrahis have been deported to Portuguese East Africa, Government has not yet been able to confirm the fact of deportation. Further inquiries are in progress.

The Note which was handed over to the Portuguese Minister was returned by him on the 12th April on the grounds that it was unacceptable to his Government as it amounted to interference in Portugal's internal affairs. The Foreign Secretary informed the Minister that in the Note which was handed to him on the 11th a formal warning had been given to the Portuguese Government of the serious repercussions of their repressive measures. This warning was repeated verbally to the Minister when he returned the Note on the 12th April.

On the eve of May Day, indiscriminate arrests of Indian and Goanese railway workers at Marmagao were made. These people were released later after questioning.

This will indicate the seriousness of the situation in Goa and the complete suppression of even normal civil liberties and the terrorization of the people by the Portuguese authorities. The situation is grave and will become even graver if the Portuguese authorities deport any of these satyagrahis.

Dr. Lanka Sundaram (Visakhapatnam): In view of the statement made just now, indicating barbarism

and inhuman acts on the part of the Portuguese Government, may I know from the Prime Minister whether any change of policy is indicated by him?

Shri Jawaharlal Nehru: Well Sir, I cannot indicate that. Naturally, we have to keep the situation in view completely and the policy we are pursuing is not exactly a static policy, it is a dynamic policy and whatever change is at any time made, will naturally be brought to the notice of the House. Obviously, I cannot indicate these things vaguely at such a time as this.

Mr. Deputy-Speaker: In view of the statement made by the hon. Prime Minister, I do not think it is necessary to give consent to the Adjournment Motion. With regard to the other Adjournment Motion I call upon the Labour Minister to make a statement.

LABOUR SITUATION IN KANPUR

The Minister of Labour (Shri Khan-dubhai Desai): Sir, I would like to make the following statement regarding developments in the Kanpur textile strike.

The disputes which have arisen over certain schemes of rationalisation in the cotton textile industry at Kanpur are, under the Industrial Disputes Act, a matter entirely within the jurisdiction of the State Government. Nevertheless, in response to the requests made by a number of hon. Members, I got in touch with the State Government, who have been only too happy to supply me with all necessary information on the subject.

The question of rationalisation in the textile mills at Kanpur is not a recent one. It was examined in detail by the Rajendra Prasad Committee in 1938 and the U.P. Labour Enquiry Committee in 1948, both of which, with the full concurrence of the workers' representatives accepted and recommended the necessity of rationalisation, particularly of workloads, subject to the adequate safeguarding of

workers' interests. The working of rationalisation schemes in individual units, however, led to same retrenchment. Somewhat concerned over this development, and on the initiative of workers themselves, the State Government held a tripartite Conference at Nainital early in 1954, at which the principle of rationalisation was unanimously approved by all sections, including labour, subject to the following safeguards:

- (1) that the introduction of rationalisation schemes should not lead to the retrenchment of even a single worker whether he be permanent, substitute or temporary, and that any reduction in the size of the labour force should be achieved only through retirement and natural wastage;
- (2) that the profits of rationalisation should be shared equitably between the employer and the workers; and
- (3) that proper working conditions should be ensured so that the revised workload does not entail any hardship to the worker.

A Committee of seven, including three representatives of workers and three of employers with the Labour Commissioner as Chairman, was set up to work out the details of rationalisation schemes in respect of individual mills on the basis of these principles.

It was unfortunate, however that what was intended as a measure to safeguard the interests of workers and to protect them from some of the inevitable consequences of voluntary efforts through private negotiation should have been so speedily misrepresented and made the butt-end of a perverse propaganda by a section of labour, interested apparently not so much in the interests of labour as in the consolidation of its own position. Fantastic pictures of large-scale unemployment and of crushing

[Shri Khandubhai Desai]

work loads were freely drawn to frighten the unsuspecting labour. In face of this propaganda, the seven-man Committee could make no progress and broke up. A newly-formed textile union, the activities of which had already necessitated the promulgation of an order under section 144 of the Criminal Procedure Code, thereupon gave notice of a general strike in the textile mills at Kanpur and started a campaign of intimidation and molestation of peaceful workers. In the interests of maintenance of peace, the local authorities have had to arrest a number of persons, about 138 till the afternoon of 2nd May 1955, of whom as many as 89 were arrested for defiance of lawful orders.

Of the eleven mills affected by the general strike, one worked with its full complement of labour on the first day of the general strike and two others with more than half of their usual complements. Five others worked with a smaller proportion of workers. In one mill there was a lockout. It was only in two mills that the attendance was very poor. Yesterday, which was the second day of the strike, the situation was not very different.

Government feel that the agitation at Kanpur against what are normal and usual schemes of rationalisation is entirely misguided. Kanpur Mills are not trying to do something which mills in Bombay, Ahmedabad, Sholapur, Indore and Coimbatore have not done. Workers would be well advised, in their own interest, to understand their problems in the correct perspective and not to allow themselves to be misled by false and harmful propaganda. The Government of Uttar Pradesh have always been sympathetic to the cause of labour, and it would be a pity if the textile workers at Kanpur were to deny themselves the assistance of such an impartial and sympathetic authority in the solution of what is after all, a difficult problem. The Central Government would therefore, advise the textile workers of Kanpur to give up their present unreasonable attitude, which cannot but lead to

futile acts of violence, and to resume the constitutional methods, suddenly broken off after the Nainital Conference, of settling these problems with the active sympathy and support of the State Government.

Shri T. B. Vittal Rao (Khammam): Sir, may I make a submission before you dispose of this Adjournment Motion? I am not going into the merits, but I would request you to kindly admit this motion for the following reasons.

In the textile industry at Kanpur today there are thirty thousand workers on strike, and this will naturally affect the seven lakh workers engaged in the textile industry all over India; this will have its repercussions there. Secondly the Central Government has got its responsibility in view of the fact that it is on account of the rationalisation scheme that the whole strike is there. The third is the modest demand of the workers for the appointment of a high power tribunal to go into the question of rationalisation. In view of these grounds I would request that this Adjournment Motion may be admitted, so that we may be able to put forth our view-point on this.

Dr. Rama Rao (Kakinada): May I also make a submission? The Labour Minister has read out just now the conditions of the agreement. The first and the most important is that not a single worker should be thrown out of employment. Here the whole strike is due to huge unemployment caused due to this rationalisation. Thousands have been thrown out of employment.

Shri Khandubhai Desai: No, no.

Dr. Rama Rao: This is the basic and fundamental issue. They are asking for a high power Commission to go into the facts. He is willing to consider the matter even if a single man is thrown out of employment, whereas here thousands are thrown out due to rationalisation.

Mr. Deputy-Speaker: I have heard both sides and the statement of the Labour Minister. It is not an urgent

matter in the sense that rationalisation was started only recently; it seems to have been started earlier and there seems also to have been an arrangement. Of course, labour might not be satisfied and some persons might be interested in it.

Under the circumstances I do not think any purpose will be served by giving consent to this Adjournment Motion.

PAPERS LAID ON THE TABLE

REVIEW OF GENERAL AGREEMENT ON TARIFFS AND TRADE

The Minister of Commerce and Industry (Shri T. T. Krishnamachari): I beg to lay on the Table a copy of the Review of the General Agreement on Tariffs and Trade (Placed in Library. Se No. S-165/55)

STATEMENTS SHOWING ACTION TAKEN BY GOVERNMENT ON ASSURANCES, ETC.

The Minister of Parliamentary Affairs (Shri Satya Narayan Sinha): I beg to lay on the Table the following statements showing the action taken by the Government on various assurances, promises and undertakings given by Ministers during the various Sessions shown against each:

Supplementary Statement
No. II—Ninth Session, 1955
of Lok Sabha.

[See Appendix XIII, annexure
No. 12]

2. Supplementary Statement
No. I—Eighth Session, 1954
of Lok Sabha.

[See Appendix XIII, annexure
No. 13]

3. Supplementary Statement
No. X—Seventh Session, 1954
of Lok Sabha.

[See Appendix XIII, annexure
No. 14]

4. Supplementary Statement
No. XVI—Sixth Session, 1954
of Lok Sabha.

[See Appendix XIII, annexure
No. 15]

5. Supplementary Statement
No. XXI—Fifth Session, 1953
of Lok Sabha.

[See Appendix XIII, annexure
No. 16]

6. Supplementary Statement
No. XXVI—Fourth Session,
1953, of Lok Sabha.

[See Appendix XIII, annexure
No. 17]

7. Supplementary Statement
No. XXXI—Third Session,
1953 of Lok Sabha.

[See Appendix XIII, annexure
No. 18]

8. Supplementary Statement
No. XXIX—Second Session,
1952 of Lok Sabha.

[See Appendix XIII, annexure
No. 19]

9. Supplementary Statement
No. XXX—First Session,
1952 of Lok Sabha.

[See Appendix XIII, annexure
No. 20]

Shri T. B. Vittal Rao (Khammam): Could I know from the hon. Minister if there are still assurances etc., given in 1952 pending? I find that assurances given in 1952 are being complied with now. How many of such assurances given in 1952 are still pending?

Shri Satya Narayan Sinha: May be one or two but I cannot say it definitely from memory, but most of the assurances have been complied with recently.

Shri T. B. Vittal Rao: It is already three and a half years since 1952 and those assurances are being laid down now. I do not know what will happen to the other assurances.

Shri K. K. Basu (Diamond Harbour): We may not be here when they are laid.

Shri Satya Narayan Sinha: The hon. Member must be aware that there is an Assurances Committee of the House which goes into these matters fully.

Shri T. B. Vittal Rao: I am also a Member of that Committee.

REPORT OF COMMISSIONER FOR SCHEDULED CASTES AND SCHEDULED TRIBES

Shri Satya Narayan Sinha: On behalf of Shri Datar, I beg to lay on the Table, under Article 338 (2) of the Constitution, a copy of the Annual Report of the Commissioner for Scheduled Castes and Scheduled Tribes for the period ended the 31st December, 1954. (*Placed in Library. See No. S-183/55*)

MESSAGES FROM RAJYA SABHA

Secretary: Sir, I have to report the following four messages received from the Secretary of Rajya Sabha:

(i) "In accordance with the provisions of sub-rule (6) of rule 162 of the Rules of Procedure and Conduct of Business in the Rajya Sabha, I am directed to return herewith the Hyderabad Export Duties (Validation) Bill, 1955, which was passed by the Lok Sabha at its sitting held on the 28th April, 1955, and transmitted to the Rajya Sabha for its recommendations and to state that this House has no recommendations to make to the Lok Sabha in regard to the said Bill."

(ii) "I am directed to inform the Lok Sabha that the Rajya Sabha, at its sitting held on Wednesday, the 27th April, 1955, adopted the following motion concurring in the recommendation of the Lok Sabha that the Rajya Sabha do agree to nominate seven members from the Rajya Sabha to the Public Accounts Committee for the year 1955-56:

That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do agree to nominate seven members from the Rajya Sabha to associate with the Public Accounts Committee of the Lok Sabha for the year 1955-56 and do proceed to elect, in such manner as the Chairman may direct, seven members from among

themselves to serve on the said Committee.

2. I am further to inform the Lok Sabha that at the sitting of the Rajya Sabha held on Monday the 2nd May, 1955, the Chairman declared the following members of the Rajya Sabha to be duly elected to the said Committee:

1. Shrimati Violet Alva
2. Diwan Chaman Lal
3. Shri Ram Prasad Tamta
4. Shri P. S. Rajagopal Naidu
5. Shri Mohammad Valiulla
6. Shri V. K. Dhage
7. Shri B. C. Ghose."

(iii) "In accordance with the provisions of rule 125 of the Rules of Procedure and Conduct of Business in the Rajya Sabha, I am directed to inform Lok Sabha that the Rajya Sabha, at its sitting held on the 2nd May, 1955, agreed without any amendment to the Untouchability (Offences) Bill, 1955, which was passed by the Lok Sabha at its sitting held on the 28th April, 1955."

(iv) "I am directed to inform the Lok Sabha that the Code of Criminal Procedure (Amendment) Bill, 1954, which was passed by the Lok Sabha at its sitting held on the 8th December, 1954, has been passed by the Rajya Sabha at its sitting held on the 27th April, 1955, with the following amendments:

Enacting Formula

1. That at page 1, line 1, for the words "Fifth Year" the words "Sixth Year" be substituted.

Clause 1

2. That at page 1, line 4, for the figure "1954" the figure "1955" be substituted.

3. That at page 1, line 6, after the words "Government may" the words "by notification in the Official Gazette," be inserted.

Clause 22

4. That at page 5, line 41, the words "by the accused" be deleted.

Clause 25

5. That at page 8, after line 4, the following be inserted, namely:

"(9A) The person who has been ordered under sub-section (7) to pay compensation may appeal from the order, in so far as the order relates to the payment of the compensation, as if he had been convicted in a trial held by the Court of Session.

(9B) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (9A), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided."

6. That at page 8, for lines 8 to 9, the following be substituted, namely:

"(11) The provisions of this section shall be in addition to, and not in derogation of, those of section 198."

Clause 29

That at page 9, line 24, after the words "the accused", where they occur for the first time, the following be inserted, namely:

"for the purpose of enabling him to explain any circumstances appearing in the evidence against him."

Clause 31

3. That at page 11, the existing clause 31 be deleted.

Clause 52

9. That at page 15, line 33, after the word "thereof" the words "signed by the Judge" be inserted.

Clause 63

10. That at page 17, lines 44-45, the words "or the recording of their statements" be deleted.

11. That at page 17, lines 47-48, the words "or, as the case may be, their statements have been recorded" be deleted.

12. That at page 18, line 7, the words "or recording their statements" be deleted.

Clause 111

13. That at page 30, line 11, for the word "substituted" the word "inserted" be substituted.

Clause 112

14. That at page 30, line 25, for the words "with the previous sanction of the State Government" the words "with the previous approval of the State Government" be substituted.

I am, therefore, to return herewith the said Bill in accordance with the provisions of rule 126 of the Rules of Procedure and Conduct of Business in the Rajya Sabha with the request that the concurrence of the Lok Sabha to the said amendments be communicated to this House."

CODE OF CRIMINAL PROCEDURE
(AMENDMENT) BILL

Secretary: Sir, I lay, on the Table of the House the Code of Criminal Procedure (Amendment) Bill, 1954, which has been returned by Rajya Sabha with amendments.

HINDU MARRIAGE BILL—Contd.

Clauses 9 to 12

Mr. Deputy-Speaker: The House will now proceed with further consideration of.....

Shri Nanadas (Ongole—Reserved—Sch. Castes: On a point of information, Sir,.....

Mr. Deputy-Speaker: No point of information. I will not allow the proceedings to be interrupted like this.

The House will now proceed with the further consideration of the motion moved by Shri Pataskar that the Bill to amend and codify the law relating to marriage among Hindus, as passed by Rajya Sabha, be taken into consideration.

The Minister in the Ministry of Law (Shri Pataskar): Yesterday I started replying to the amendments moved to clauses 9 to 12 inclusive. The hon. Member, Shri More, brought it to my notice that so far as void marriages are concerned, there is a provision in clause 11 which says that any marriage solemnized after the commencement of this Act shall be null and void at the instance of one of the parties to the marriage. There is also another section,—section 16—in this Bill which provides that even where a decree of nullity is granted, the legitimacy of the children could not be called in question and they are considered to be legitimate children. So, the question that is pertinent, to my mind, is as to what would happen if nobody went to a court of law. What would be the position of those children then? I seriously paid attention to that matter and I have come to this conclusion. This might happen not only in the case of Hindus, but even in the case of other marriages. So long as the husband and the wife live together this question does not arise. Suppose, after their death or at a later time the question arises, then there ought to be some provision by which children born in wedlock for no fault of their own should not be branded as illegitimate children, whether they are Hindus, Christians or of any other religion. I find on enquiry that there is something like a Legitimacy Act, which was passed in England, and it would be desirable and worthwhile for our Government and this House to consider whether from the point of view of seeing that no sort of illegitimacy or something of that stigma attaches to the progeny we might have an Act of that nature in this country. That matter will be considered as to whether we should or should not have an Act in the nature of a Legitimacy Act as it exists in England, and I think that will satisfy my friend.

In respect of amendment No. 321 of my hon. friend, Shri Chatterjee, he said that so far as change of religion

is concerned, if in clause 13, in respect of divorce, we have recognised it as one of the things on which either the husband or the wife may initiate proceedings for grant of a divorce, why it should not also be done for the purpose of separation. To my mind, the question is a little worthwhile being discussed for this reason and looked at from this point of view. So far as judicial separation is concerned, we do not want that simply because the husband or the wife changes religion, we should allow them to have a judicial separation. If any of them strongly feels that it is impossible to continue married life, then it is no good trying to ask the husband or the wife to have judicial separation. If the wife, for instance, feels that her religious feelings are so tense that she should break her marital tie with her husband, that liberty has been given. This is applicable both to the wife and to the husband.

Shri Venkataraman (Tanjore): In that case, the husband or the wife has to wait for three years, under clause 14. Under clause 14, no divorce petition can be presented unless three years have elapsed from the date of marriage.

Mr. Deputy-Speaker: Not from the date of conversion. The hon. Member means to say that the date of marriage is as good as the date of conversion.

Shri Venkataraman: If the conversion takes place one year after marriage, they will have to wait for two years. As the law stands now, dissolution can take place within a few days after conversion. The hon. Minister will have to consider this aspect a little more closely.

Shri Pataskar: I have considered that matter very seriously. The matter was also considered in great detail by the Select Committee in which there were representatives of both the Houses. I was not a Member of the Select Committee. I do not think that mere change of religion—not

within the Hindus themselves—in respect of other religions is a valid reason. If really a husband or wife feels so strongly, I think we have made ample provisions for enabling one of them to go to a court of divorce and initiate proceedings. If the provision of three years, according to Mr. Venkataraman, is a hard thing, I think that it is a period when probably he would change the religion or re-change it. We do not know what will happen. Why go on interfering with the law of marriage only on the ground of religion and attaching too much importance to it. I think the provisions as they are, they are quite good and enough. I think it is desirable that whatever is a good ground for a divorce need not always be made a ground for judicial separation also.

Mr. Deputy-Speaker: There is a proviso to clause 14; in exceptional cases an application can be made.

Shri N. C. Chatterjee (Hooghly): That will not be applicable to the change of religion. That does not meet Mr. Venkataraman's point. It deals with exceptional depravity on the part of the respondent. It covers cases of extreme cruelty and others where a remedy can be provided.

Mr. Deputy-Speaker: There is 'exceptional hardship to the petitioner' and not 'depravity' only. If she could not touch her husband because he has changed his religion, the hardship cannot be imagined.

Shri N. C. Chatterjee: I do not know whether it will be hardship. I was suggesting an amendment in clause (1) that except in the case of conversion in all the other cases the three years rule can be kept.

Shri Pataskar: This is all what I can say with respect to amendment No. 321.

With respect to the amendment of my hon friend, Shri U. M. Trivedi, who wants even to go further and say that if the vaishnavaites, saivaites, etc. were to change their religion, they

should be allowed to separate etc. I think that it is against the spirit of the Act and I would not like to accept any such amendment.

As I have said, this Bill was brought forward with a certain ideology and at any rate to bring together what are now termed Hindus, whether they may call themselves religious groups etc. That is a different matter. From that point of view, it is a retrograde amendment which was suggested by my hon. friend and I cannot under any circumstances agree to a proposition like this which goes against the spirit of the Act.

There was one point in respect of which my hon friend Shri Chatterjee has made a query and he said whether, apart from the provisions contained in sections 11 and 12, it would not be open to a person to challenge the validity of a marriage by resort to section 42 of the Specific Relief Act because there had been a breach in respect of some of the conditions mentioned in clause 5. Shri N. C. Chatterjee raised this point and nobody has raised the point. I have very seriously examined the question because we are passing a law and we should know what the implications are. So far as clause 5 is concerned, it lays down several conditions which should be fulfilled and there may be a marriage solemnized between any two Hindus if the following conditions are fulfilled; there are six conditions. Out of those conditions, conditions 2, 3 and 6, according to my mind, are conditions which make it voidable; it is on a very sound and rational basis. What is condition No 2? "Neither party is an idiot or lunatic." In the case of an idiot we do not want to say that it is absolutely void. We say it is voidable. It means that there cannot be any resort to provisions of section 42 of the specific Relief Act. With respect to the provisions which are merely voidable the marriage will continue to be perfectly valid. The whole idea is that as far as possible we want to see that marriages should not be lightly disturbed by anybody. From that point of view these are

[Shri Pataskar]

the conditions. Then we have to look to the provisions contained in clauses 11 and where there are voidable marriages and we have also laid down the rule with respect to void marriages. It is open to question, in view of the specific provisions which had been made with respect to the fulfilment of these conditions under sections 11 and 12, as to what would happen in case of a breach of some or any of these conditions. It would of course not be possible for me to say as to what conclusion the courts will come to. But I have, like my friend, gone into the question and I think the difficulty probably may be in view of the specific provision which has been made in this Act itself with respect to the fulfilment or non-fulfilment, compliance or non-compliance with those conditions whether it would be open to anybody to have resort to the Specific Relief Act for the purpose of getting that declared void. However, that is only a theoretical matter and it may be decided in courts.

Shri S. S. More (Sholapur): The petition can be construed as a suit. If it is so then a suit under the Specific Relief Act will be permissible. Otherwise, having prescribed a special procedure and a special form of pleading by way of petition, it will be difficult to seek the application under 42.

Shri Pataskar: However, I would rather appeal to my hon friend that we should follow this; it is better....

Shri N. C. Chatterjee: It was not my object to make every marriage void because there is some non-compliance with some conditions. The only difficulty I feel is this. If you kindly look at section 5 there are these conditions for a Hindu Marriage. In section 11 you say: "Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party be so declared by a decree of nullity...." Some conditions are pre-

cribed there. What I thought was this. Although you are talking that, you know that unless you include the jurisdiction of the ordinary civil courts a suit can be filed under section 42 of the Specific Relief Act as a condition prescribed was not fulfilled for the validity of the marriage under this Act and the jurisdiction of the ordinary courts is not shut out. Therefore, it is not an exclusive remedy prescribed and therefore section 42 suits can still lie. That will lead to an anomaly. I wanted my hon. friend to apply his mind to that aspect of the question. I do not want to make every marriage void.

Shri Pataskar: I do not ascribe any motive to the hon. Member.

Pandit Thakur Das Bhargava (Gurgaon): In clause 11 we find that "any marriage...shall be declared to be null and void and may on a petition presented by either party..." whereas in clause 12, there is no such condition. It is not indicated whether the party only has got a right of presenting a petition or some other person also interested in the matter can bring the matter to the court.

There is a guardian and his permission has not been taken or the permission of the guardian has been taken by force or fraud. In that case the guardian is the competent person who can make an application but nothing is indicated in clause 12. Nothing is indicated in clause 12 as to who will be the person who will have the right to go to court. In clause 11, the right is limited to the parties thereto. I want to know why this distinction is made between clauses 11 and 12.

Shri Pataskar: I will make it clear to the hon. Member. Clause 11 deals with a void marriage and, therefore, we had to lay down that that can be declared void only at the instance of the wife or the husband. I need not go into details about that.

Clause 12 deals with a voidable marriage that is between the husband and wife and naturally it must be either at the instance of the husband or at the instance of the wife.

Pandit Thakur Das Bhargava: Whereas in the case of a void marriage it should be open to everybody to have it declared so and in the case of a voidable marriage it should be for either party, here in the case of a void marriage it is open only for either party, the husband or the wife.

Pondit D. N. Tiwary (Saran-South): What about the guardians?

Pandit Thakur Das Bhargava: Guardians also must have the right.

Shri Pataskar: In law the guardian has the rights of the minor.

Pandit Thakur Das Bhargava: But, you do not say so.

Shri Barman (North Bengal—Reserved—Sch. Castes): I think Mr. Chatterjee's argument is not right and that the relief under section 42 of the Specific Relief Act should be there. Otherwise, if there be a void marriage contracted between *sapindas* and none of the parties, either the husband or the wife, though the marriage is illegal and void, go to the court, then the illegal marriage remains. It should be open to others to declare that marriage null and void; but, there should be some definite time limit. The remedy should not continue for any length of time because, otherwise, the couple may have a number of children and say, after 15 years, somebody interested in the devolution of property may come in and have the marriage declared null and void and the children may be debarred from inheriting to property.

Mr. Deputy-Speaker: If section 42 applies, it applies.

Shri Pataskar: I have deliberately avoided that myself and Mr. Chatterjee should try to do so here. I would not like to and I have tried to avoid

saying whether the jurisdiction of the courts is barred or not because that is a matter entirely in the hands of the courts. We just avoid deciding that question here.

Shri S. S. More: It is not a question of the Minister leaving the matter and not deciding it. The point is this. We want to confine this right of getting the marriage declared null and void to certain specified persons. I will read section 42 of the Specific Relief Act.

"Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief."

Take, for instance, this; under our present law, a widow has a limited interest and she is contemplating certain alienation. A reversioner may go to the court with a suit and challenge certain actions contemplated by the widow or which have been actually done regarding his rights which are likely to be affected. So, if section 42 is left open for application to such marriage cases, then the married couple is at the mercy of any person having some interest, either real or imaginary, in the property and who may go to court. Therefore, I would make a specific plea to the hon. Minister concerned to set out specifically that section 42 of the Specific Relief Act will not be applicable. Otherwise, you leave the married couple to the tender mercies of those persons who are busy-bodies, who may deal in property; and the children, particularly, of such a marriage will be the unfortunate victims. They will not be in a position to secure their own interest because the parents have, somehow, contracted a void marriage, and the shark-like relatives of the parents will be going after or going against them.

Mr. Deputy-Speaker: Has there been a single case now of any person who is not directly a party to the marriage having filed a suit for declaration and getting a declaration that the marriage is null and void? There is no good comparing it with a reversioner's case.

Shri S. S. More: I will only mention a definite case. In Poona district, there is a Sardar family. One of the sons belonging to that family contracted a *sagotra* marriage. The son and the father fell out and there were some children to the son from his previous wife. It was the grandfather who went to the court seeking declaration that the marriage is void. There were children taking their education at college. Subsequently, we passed an enactment here validating even *sagotra* marriage. That was a very protracted litigation. I know so many *shastries* were invited as witnesses whether this sort of marriage was legal or not and whether it was customary or not and it was a very interesting case. So, there is every possibility...

Mr. Deputy-Speaker: I do not know.

Shri S. S. More: I refrained from mentioning all this....

Mr. Deputy-Speaker: This can arise incidentally in some other succession case.

Shri S. S. More: You were not here yesterday, Sir. I will give a concrete illustration. Let us say A and B have contracted a void marriage. They are not interested in having the marriage set aside because they love each other. What happens? They procreate children and after, say, 20 years A dies. Then some of the agnate brothers of A—A and his brothers may be members of a joint family—will come and say after 20 years that the children are all illegitimate because A's marriage was void, and they cannot have the property. A's brother will step into the shoes.....

Mr. Deputy-Speaker: There may be such a phenomenon. It is not clear if section 42 of the Specific Relief Act

will apply to a case of this kind. I will call upon the hon. Minister to reply.

Shrimati Renu Chakravartty (Basirhat): This is exactly the point which I also raised. I am not a legal person and therefore I cannot refer to law. But, I did want that nobody else excepting the parties to the marriage should raise this question because of its repercussions on the children. Therefore, I want to be quite sure about it. I rather feel, after hearing Mr. More and Mr. Chatterjee that this section does allow reopening the entire case to third parties and anybody can reopen that, then this lacuna must be stopped.

Shri Pataskar: I would submit that this is a law relating to marriage.

Mr. Deputy-Speaker: I am not going to allow any arguments.

Shri Pataskar: We need not start over again.

Shri Raghavachari (Penukonda): The difficulty contemplated by our friends has sufficiently been provided for in the proviso to clause 16. What was definitely contemplated was that in the case of children who might be exposed to the risk of being declared illegitimate children by some subsequent or later litigation by persons interested in the properties to which they might raise a claim, those cases were definitely stated to be outside the scope of this legitimacy. This legitimacy was considered in respect of the rights to the properties of the parents only. Therefore, in the case of other difficulties that are contemplated by our friends, it is definitely contemplated by this Bill that those claims are certainly subject to be disputed in a court of law.

Shri N. C. Chatterjee: Probably, we did not make ourselves clear. If you kindly look at clause 16.....

Mr. Deputy-Speaker: The hon Minister may go on.

Shri Pataskar: I should like to tell my friends that so far as my opinion is concerned, in view of the special provisions contained in this marriage Act, so far as the validity of the marriage, apart from the question of inheritance etc., it has to be decided only by the procedure provided under this Act. When there is a specific provision, I do not think it will be open to any court to have resort to section 42 of the Specific Relief Act. However, it would be open to anybody to go to court. That is a different matter.

The other thing which I would like to point out is this. I would like to reply to Mr. More and to Shrimati Renu Chakravarty that in spite of any provision that we may make in this marriage law in spite of clause 16, where, if at some later stage, the question of illegitimacy arises, that will arise not only in the case of a Hindu, it may arise in the case of all people and the remedy that has been found to solve this problem is to resort to a Legitimacy Act. I have already stated that I am prepared to examine that point to have such an Act not only for the benefit of the issue of such marriages amongst the Hindus but amongst all communities. I think it would be a better measure. I would consider that point of view; but, here the discussion has been enough.

Shrimati Renu Chakravarty: Why not say so?

Pandit Thakur Das Bhargava: May I submit a word?

Shrimati Jayashri (Bombay-Suburban): I am asking a question. The marriages are going to be registered and in that, perhaps, all this information will be available, whether they are sagotras, whether they have got one spouse living and all the information will be provided. So, if there is any false declaration in the registration, then steps can be taken.....

Shri S. S. More: Supposing some false statements are made?

Shri Pataskar: I think, we need not enter into all that. It is an enabling

clause. The States may, if they want, have registration.

Pandit Thakur Das Bhargava: According to section 11, such marriages are null and void. There is no doubt about that. But they may be declared as such only by certain persons. So long as they are null and void in law, if any question incidentally arises, the courts will be at liberty to say that the marriage is null and void.

Mr. Deputy-Speaker: Why should we discuss all these matters here? How is it possible to decide why should the courts exist, etc.?

Pandit Thakur Das Bhargava: They have limited the rights of the parties. Not only the husband or the wife, but others also are interested.

Mr. Deputy-Speaker: Is it contended that it is a judgment *in rem*?

Shri S. S. More: It could not be.

Mr. Deputy-Speaker: It is a petition. There are many difficulties. They may come in by way of amendments whenever necessary.

Shrimati Renu Chakravarty: Why can't we say, "notwithstanding any thing contained in section 42"? What is the difficulty? Does the hon. Minister want that that it should be left open?

Shri Pataskar: To my mind, nothing is left open. Supposing by human ingenuity or by some other means it happens that our intentions are not carried out, we shall see.

Mr. Deputy-Speaker: The question is:

"That clause 9 stand part of the Bill."

The motion was adopted.

Clause 9 was added to the Bill.

Mr. Deputy-Speaker: I shall now put the amendments to clause 10.

The question is:

In page 6, line 20, for "two years" substitute "three years".

The motion was negatived

Mr. Deputy-Speaker: The question is:

In page 6, for lines 22 to 25, substitute

"(b) habitually treats the petitioner with cruelty; or"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 6,

(i) in line 22, omit "such"

(ii) in lines 22, 23, 24 and 25,—

omit "as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party;"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 6, omit lines 26 to 28.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 6, line 26,

for "one year" substitute "two years".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 6, line 26,

for "one year" substitute "three years".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 6, line 28,

omit, "a virulent form of".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 6, omit lines 29 to 31.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 6, line 29, after "has" insert:

"for a period of not less than one year"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 6, line 29, after "has" insert,

"for a period of not less than one year".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 6, line 29, after "has" insert "for a period of not less than three years,"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 6, line 29, for "before" substitute "preceding".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 6, line 33, for "two years" substitute "one year".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 6, line 33, for "two years" substitute "three years".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 6, omit lines 35 and 36.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 6, for lines 35 and 36, substitute:

"(f) on any other ground which is just and reasonable in the discretion of the court."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 6, after line 36, add:

"(g) has, without reasonable excuse, withdrawn from the society of the petitioner and the court is satisfied of the truth of the statements made in such petition and no legal grounds are present to deny granting of such application".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 6, after line 36; add:

"(g) has another spouse living and the petitioner had no knowledge of that fact within one year of the presentation of the petition or of the commencement of this Act whichever expires later."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 6, after line 36, add:

"(g) has changed his or her religion after the solemnization of the marriage:

Explanation.—Change of religion shall mean and include a change from Hinduism to any other religion or vice versa."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 6, after line 36, insert:

"(g) has changed his or her religion and has embraced any other religion mentioned in Section 2 Clause (I) sub-clause (c)."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 7, after line 3, add:

"Provided however that, if this separation has been decided on the ground specified in clause*(g) of sub-section (1), the court shall order the offending party, if made, to pay to the wife two hundred

rupees per month for her maintenance and fifty rupees per month for every child below the age of twentyone."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 10 stand part of the Bill."

The motion was adopted.

Clause 10 was added to the Bill.

Mr. Deputy-Speaker: Now amendments to clause 11.

The question is:

In page 7, lines 6 and 7, omit "on petition presented by either party thereto"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 7, lines 6 and 7, omit "on a petition presented by either party thereto,"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 7,

(i) line 7, after "either party thereto"

insert "or by any other person interested";

(ii) line 9, after "(i)" insert "(ii), (iii)"; and

(iii) after line 9, add—

"(2) All persons mentioned in section 6 or who are included in the definition of sapinda relationship as given of clause (f) or are included in the definition of degrees of prohibited relationship in clause (g) of section 3 shall be deemed to be persons interested for the purposes of section 11."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 7, lines 8 and 9, omit "clause (i), (iv) and (v) of"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 7, line 9, omit "(i)".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 7, after line 9, insert:

"(2) Notwithstanding the provisions of the Indian Limitation Act (IX of 1908), no petition under section 11 of this Act, shall lie after two years from the date of the solemnization of marriage and the marriage not so declared null and void by a petition under section 11 shall be valid for all purposes notwithstanding the contravention of section 5 of this Act."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 7, line 9, add at the end:

"and the provisions of section 15"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 11 stand part of the Bill."

The motion was adopted.

Clause 11 was added to the Bill.

Mr. Deputy-Speaker: Now amendments to clause 12.

The question is:

In pages 7 and 8, for clause 12, substitute:

"12. *Petition for dissolution of Marriage or Divorce.*—(1) A husband or wife, whether married before or after the commencement of this Act, may present a petition for dissolution of marriage or divorce on any of the following grounds:—

(a) that the respondent has been impotent and continues to be so at the time of petition; or

(b) that the respondent has been a lunatic or an idiot; or

(c) that the respondent has been suffering from leprosy and some other loathsome disease not contracted from the petitioner; or

(d) that the respondent has not been heard of as being alive for a period of three years by those persons who would have naturally heard of it, had the respondent been alive; or

(e) that the respondent has deserted the petitioner for a continuous period of two years; or

(f) that the respondent, if a husband, has any other women as a concubine or associates with women of bad repute and leads an infamous life; and if a wife, is a concubine of any other man or leads a life of illicit or criminal intimacy with any other person openly or leads the life of a prostitute; or

(g) that the respondent has not resumed marital intercourse for a period of two years or upwards either after the solemnization of marriage or after the passing of the decree for judicial separation; or

(h) that the respondent has failed to comply with a decree for the restitution of conjugal rights for a period of two years or upwards after the passing of the decree; or

(i) that the respondent has ceased to be a Hindu by conversion to another religion; or

(j) that it is not possible to lead in future, a happy married life with the respondent for any other just and sufficient cause or ground in the discretion of the court.

(2) A wife may also present a petition either for the dissolution of marriage or for divorce on the grounds—

(i) that in the case of any marriage solemnized before the commencement of this Act, the husband had married again before such commencement or that any other wife of the husband married before such commencement was

alive at the time of the solemnization of marriage of the petitioner;

Provided that in either case the other wife is alive at the time of the presentation of the petition; or

(ii) that the husband has since the solemnization of marriage, been guilty of cruelty; or

(iii) that the husband has neglected or has failed to provide for her maintenance after demand for a period of two years or above; or

(iv) that the husband has been sentenced to imprisonment for a period of four years or more if she is below the age of thirty-five years."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 7, lines 10 and 11, omit "whether before or".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 7, line 12, after "may" insert:

"on a petition presented by either party"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 7, line 16, after "proceeding" insert:

"to be certified by civil surgeon with oath in open court"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 7, line 22, after "fraud" insert "or not obtained at all"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 7, after line 24, add:

"(e) that the marriage is in contravention of the condition specified in Clause (iii) of section 5".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 7, line 29, for "one year" substitute "three years".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 7, omit lines 41 and 42.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 8, after line 3, add:

"(3) Notwithstanding anything contained in sub-section (2), if the petitioner has been prevented from presenting the petition within time by reason of any fraud or coercion exercised by the other party to the marriage or by some other person, the court may accept such petition if it is presented within one year of the date on which the fraud had been discovered or coercion had ceased."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 7, line 42, for "one year" substitute "two years".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 12 stand part of the Bill".

The motion was adopted.

Clause 12 was added to the Bill.

Clauses 13 to 18

Mr. Deputy-Speaker: We shall now proceed to another group, clause 13 to 18 for which four hours have been allotted. Hon. Members who wish to move their amendments to these clause will kindly hand over the numbers of their amendments specifying the clause to which they relate to the Secretary at the Table within 15 minutes.

Shri N. C. Chatterjee: I have amendment No. 347 to clause 15.

Mr. Deputy-Speaker: Yes. I would also request the other hon. Members who say that they do not get any time and that the same Members are speaking again and again, to just send me chits. I will call them also.

Shri N. C. Chatterjee: My amendment is:

In page 9,

after line 36, add:

"Provided further that it shall not be lawful for the parties who had committed adultery and which adultery was the ground on which the divorce was granted, to marry each other."

This is frequently happening in some of the western countries. The offending parties commit adultery and that is made a ground of dissolution or divorce. Immediately after divorce is granted, you will find that they contract a marriage. I am suggesting that that should not be allowed in any event. Those parties who have broken the home, who have disputed the purity of the marital tie, should not be allowed to utilise their crime, their sin or the infraction of their marital tie as a convenient charter to enter into a second matrimonial bond. We should not, in any event, in our anxiety to civilise or christianise our Hindu system of marriage, allow an infraction to be tolerated. My position, I may make clear, is this. I am totally opposed to clause 13, which is the divorce clause. I have tabled an amendment along with a dozen Members of Parliament, not belonging to one party, but belonging to different parties who wanted to oppose this clause 13 together. I had made a point which was not answered by Shri Pataskar. I said that there is absolutely no necessity for this divorce clause, unless you want to parade that you are so civilised and progressive in 1955 that you want a divorce clause in the Hindu Marriage Bill. But that is the main thing for which you are having this Bill, and I do not know why you have changed the title from

the Hindu Marriage and Divorce Bill and call it the Hindu Marriage Bill.

Why do you have this clause? I pointed out at the outset that there is absolutely no necessity for this, excepting to show that you are fashionable, progressive, that you are anti-reactionary, anti-medieval and so on, and that you take a particular pleasure in defying our *Dharma Shastras*, in not recognising Manu and *Yajnyavalkya*. Even *Kautilya's Artha Shashtra* says: *Amoksha dharmabibahana*, that is the Hindu dharmic marriage is an inviolate, inviolable, indissoluble interminable, eternal, perpetual union.

Shri Gadgil (Poona Central): You have exhausted all the adjectives.

Shri N. C. Chatterjee: I have not exhausted all the adjectives. I do not know what the aspiration of my *Kaka sahib* after this Bill, but...

Shri Gadgil: Same as yours.

Shri N. C. Chatterjee: I am tied too much. If he reads the *Kama Sutra* of *Vatsyana*, he will find even there it is said:

Agnisakshika vivaha na nibartante.

There is no retreat from the marital tie which you have performed before the sacred fire. If you read any of the canonical texts of Christianity you will find the great judgment of Lord Penzance, who is recognised as an authority, in the celebrated case of *Hyde vs. Hyde*, that it is a holy union of man and woman for life and it shall never be dissolved. That is the original teaching of Christ. That is the Catholic teaching which has been respected by millions of people.

Pandit K. C. Sharma (Meerut Distt.-South): But now they are not.

Shri N. C. Chatterjee: No. That is not correct. What I am pointing out is this. You have passed the Special Marriage Act, and you have made a provision that even Hindus who have married under the sacramental rites, under customary rites, can avail themselves of that Act and register

themselves and can apply for divorce and get all that they want. Now, if you honestly feel that divorce should be allowed, you have got it. What is the point of imposing this on people who do not want the introduction of divorce in sacramental marriage. I will not fight with my friend, Shri Pataskar, whether sacrament means *sanskar* or not, it is one of the *sanskar* and the only *samskar*, as Gurudas Banerjee, M. M. Kane and Chandrasekhara Aiyar have pointed out, for women. Therefore, if they believe in that and they want that the same system should continue, which has continued through millenium, why have this divorce here? They are perfectly entitled to go and register themselves, convert the sacrament into a civil contract or a civil marriage, and then apply for divorce. They have got that right, they have got that power, that election, that freedom. Why this imposition of divorce? What for? What is the point of doing it?

What I am pointing out is this, that this indissoluble character is regarded with veneration and sanctity even today by millions and millions of people in this country. And, without repeating my argument, I submit that you should not outrage their feelings.

I know that you may say that it is the great prerogative of Parliament to make laws ahead of public opinion. That is not always desirable, and it may be defeated. It may be defeated badly.

I have a friend of mine, an English barrister practising in the Supreme Court, with whom I used to practise when I was a barrister in the Calcutta High Court. He was asking me: "Do people realise when they are introducing divorce that unless there is economic equality, only legal equality will be a nightmare?" It is a different thing in England or France or Germany. There, if the husband makes an allegation against his wife, a false allegation to get rid of her, the wife has got the economic independence. She has got the status, the facilities to fight it out. But, taking our coun-

try and our society as it is, how can a poor Hindu woman fight? Supposing a wicked husband makes an untrue allegation against his wife, would it be advisable really for that woman to fight? And remember the aftermath of divorce. As Acharya Kripalani has pointed out, is there any chance for a divorced woman to have a husband? You cannot even marry off widowed daughters here. It would be very difficult. You can pass this kind of legislation, but this will be of no effect.

Our civilisation has refused to look upon man merely as an economic being, controlled by the laws of supply and demand. We do not recognise that aspect of Western civilisation which looks upon man as a political animal swayed by class conflict. We look upon men as meant for a higher destiny and entering into some kind of matrimony of soul for the uplift of their personality and for maintaining a pure family life. Should you now in independent India, especially when you represent predominantly the Hindu community, the Hindu electorate, the Hindu nation, impose this kind of divorce law, when you do not really require it, when anybody who wants to be called progressive, fashionable, civilised, anti-deluvian, can really have a remedy through the Special Marriage Act. You have provided there, in spite of the protest of some of us, that even men and women who have married 20 years ago under sacramental rites can go and have themselves registered, and what is the difficulty? Why can't they do it? I am also prepared and made an offer to discuss the matter with my friends on the Treasury Benches—why don't you consider this, that if you think that in certain cases a unilateral declaration or jurisdiction should be permitted, that can be provided for under the Special Marriage Act, so that all cases of hardship can be mitigated.

Now, it is often said that we are wrong when we point out that these anti-bigamy laws have created hardship for women. I repeat that it is

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a fact. Now, one gentleman whom I met the other day, has gone into these cases under the Bombay Act. It is not true that 148 cases have happened in Bombay. Only 148 cases were heard by the Bombay High Court, but that Act is not confined to the City of Bombay alone. Therefore there are hundreds of other cases, thousands of other cases.

The other day, one of my friends who has great experience in Bombay Courts, Shri Kanavade Patil, was saying that he has appeared in at least a hundred cases in one district court. He comes from Ahmednagar. One lawyer from Madras was telling me that in Chingleput district in one year there had been more than hundred cases.

If you go to the Bar, my great profession has been hard hit. Mr. Anthony knows that by the abolition of zamindari, half of the lawyers are starving in Bihar and Uttar Pradesh and more than half of the Bar is starving, will be starving, possibly in Bengal, Rajasthan, Madhya Pradesh and Madhya Bharat. This will be giving some occupation to them. But is that right? I am now here doing something unprofessional, against my own professional interests, but is that right? Is that the goal which you cherish? Is that the ideal which you like to hold aloft? I am submitting, not.

It has been clearly proved—and I can give facts and figures—that in Bombay and other States it has worked to the detriment of the women.

Shri S. S. More: No, Sir.

Shri N. C. Chatterjee: Acharya Kripalani is perfectly right when he said that this will not do good to women, this will really do harm to them. This gentleman who has written a monograph on the divorce position among the Hindus—he is a professor of jurisprudence in the University of Banras—has analysed the position. He has gone to Bombay, and he

has been given access to all the records of all the cases there, and after studying them, he has marshalled the facts and his definite conclusion is that it has really been a charter of freedom or licence for men and it has done very little good for women. On the other hand, it has acted as a great hardship. I am pointing out this, that having regard to the condition of society, having regard to the status of our women, Hindu women will rather commit suicide than go to a court of law, even if they are served with a notice, even to clear or vindicate their character, if some accusation is made. Look at other countries. In the United States of America—I am giving the figures—the total number of divorces in the year 1935 reached the figure of 2,18,000. Marriages during that period numbered about 13,27,000. But they are progressing; therefore, progressively divorces are increasing. Progressive realisation of civilisation means progressive increase in the tempo of divorces. In 1937, the number of divorces was 2,50,000, a record number. It has gone up much further. In the United States, there is one divorce to every five marriages. That is the standard. It is practically the same thing which is happening in England. It is not so bad, but they are also progressing towards that. In the State of Oregon—you know, in the several States they have several divorce laws—from 1925 to 1929, facts show that there was one divorce to every two and a half marriages. This is in the United States of America and this is how divorce laws are operating.

Mr. Deputy-Speaker: What happens if there is one divorce to every marriage?

Shri N. C. Chatterjee: That is the great ideal that some of my friends cherish. In 1920-30, the figures in these countries were: 48.8 per cent cruelty, 29.6 per cent desertion and 8.3 per cent adultery. You know in these adultery cases and so-called cruelty cases, there is a good deal of collusion. Therefore, they have got the King's proctor attached to every matrimonial court. It is the King's

proctor's duty to find out exactly what is happening.

Now, I ask you not to laugh at the experience of Shri Kanavade Patil. He was not inventing theories. He was giving you the facts and his facts are correct. He himself appeared in about a hundred cases. He says there has been in fact great suffering to women and this has not added to conjugal happiness or the stability of the marital tie, but it has disrupted it. Therefore, I am asking you to seriously consider whether you should introduce divorce here, especially when provision has been made for marginal cases. There is absolutely no necessity for having this kind of divorce in this particular law. For practically one century our country has reconciled itself to this. For whom are you legislating? I call it the Caste Hindu Marriage Bill because you are excluding from this all the Scheduled Tribes and the Scheduled Castes and also lakhs and lakhs, nay, crores and crores of other people—I think 20 to 25 crores; according to my hon. friend, the Minister's computation, 75 to 80 per cent. are really not being compulsorily governed by this. Then you are legislating only for the upper classes, only for the regenerate classes. If you do legislate and make it compulsory for the caste Hindus, for the anglicised or for the western educated, for the liberal progressive Hindus and so on, then I point out that they can easily get marriages registered by declaration under the Special Marriage Act and there is absolutely no necessity for having this kind of divorce.

I am submitting that there should be no imposition, I am submitting that there should be no dictation. Law should reflect the social will. Social will does not demand it today. The legal imperative should not be ahead of the social imperative. The social imperative does not justify this kind of divorce. You have provided for marginal cases, you have provided for the hardest cases. Sir, we have abolished *sati*, and when we abolished *sati*, we abolished a barbarous custom, a custom which was very revolting.

But I give you one statement of fact, not a story, about what happened in my life. My uncle died as a result of a riding accident and my aunt was almost a child widow. She became a widow at the age of 14. When she was dying, she sent for me. Of Course, in a joint family system, there is no distinction between a mother and an aunt. I looked upon her, everybody looked upon her, as just a mother. She sent for me. When I went there, she said, 'I am going. I want to bless you'. I said, 'You are going. It is a very sad thing'. Then she said, 'I am giving you my blessing. I wish and pray that some day you will be one of the great sons of Mother India, but if that ever comes and if you ever go to the Central legislature of India, then I ask you, my boy, to withdraw the abolition of *sati*. I got such a shock of my life. She was pleading for the abolition of that law which outlawed *sati*. I said, 'Mother, what are you saying?' I thought that she was dying of cardiac trouble and, therefore, her brain was clouded. She said, 'No.' The dying lady sat up on her bed and said: 'You people imitate the English and you abolished *sati*. When your uncle died, I would have been very happy to die that day. But what right had you to burn me every day of my life up to this age. Would you give us all that is given in other countries. You are following the English. Could you give that life to me and other unfortunate women? Having denied that you should give us this great boon of abolition of *sati*.

Now, that made a great impression on me. I am not pleading here for the restoration of *sati*. But I am asking you in all humility to remember that it is one thing to legislate ahead of times, it is one thing to say that you are a civilised country making progressive laws, but if you cannot give that economic equality to our women, if you cannot add really to their happiness, if you cannot give them that economic independence and that complete freedom from many troubles that our women folk suffer from, this will do no good to them. It will be adding to their misery, to their unhappiness.

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There will be more discarded wives. It will give a greater charter to those husbands, to the men folk, to utilise this provision of divorce for their own self and for the satisfaction of their own lust. I am pleading with you to remember that at least for sixty years or seventy years, the higher caste Hindus have reconciled themselves to monogamy without divorce. It is not right to think that monogamy must go along with divorce. I say we have pursued a higher ideal, a loftier ideal, and that ideal should be cherished and sustained by the Parliament of India.

Mr. Deputy-Speaker: Shri U. S. Dube.

Shri Mulchand Dube (Farrukhabad Distt.—North) rose—

Mr. Deputy-Speaker: I will call those hon. Members who have not had a chance to speak so far.

Shri Sivamurthi Swami (Kushtagi): I have had no chance.

Mr. Deputy-Speaker: I will call one after the other.

Shri S. L. Saxena (Gorakhpur Distt.—North): What about those who have amendments?

Mr. Deputy-Speaker: Amendments will take care of themselves.

Shrimati Renu Chakravartty: Shri N. C. Chatterjee referred to his amendment and has spoken. But others are not allowed.

Mr. Deputy-Speaker: The hon. lady Member will have her turn.

Shri U. S. Dube (Basti Distt.—North): I am here. I was called.

Mr. Deputy-Speaker: But why does not the hon. Member speak? First Shri U. S. Dube will speak. Then Shri Mulchand Dube will speak.

श्री यू० एस० दुबे : मैं चाहता तो पहले यह था कि मुझे इस बिल के जनरल डिस्कशन के समय हाउस में बोलने का अवसर मिले, पर दुर्भाग्यवश मैं बेयर की आई नहीं जा सका।

अब मुझे इस बिल के इन क्लोज़ के बारे में कुछ कहना है। मेरी समझ में जो डाईवोर्स का क्लोज़ इसमें है, वह इस बिल में से निकाल देना चाहिये। हिन्दू समाज जिसके लिए कि यह कहा जा रहा है कि यह एक प्राप्रेसिव मेजर है, मेरी समझ में नहीं आता कि हम लोग पश्चिम की जो सभ्यता है, उसे देख करके सारी जो चीजें पश्चिम में हैं, वह सब प्राप्रेसिव हैं और अपनी जो कुछ भी चीजें हैं वह सब पीछे ने जाने वाली चीजें हैं, रिएक्शनरी हैं, ऐसा विचार अधिकांश लोगों के दिमाग में आने से हमारे समाज को एक बड़ा धक्का पहुंच रहा है। आज जो विधेयक में यह क्लोज़ डाईवोर्स के बारे में है, मैं निहायत अदब से कहना चाहता हूं कि भले ही वह कुछ लोगों को जिनको कि हिन्दू स्त्रियों के भीतर उनके शादी के रिवाजों में व्यभिचार की बातें नज़र आती हों, उनका कुछ भी इस बारे में विचार हो, मुझे कुछ कहना नहीं है, पर मैं ने जो कुछ देखा, जो कुछ हिन्दू समाज के भीतर नज़र आया, वह यह रहा कि हिन्दू शादियां अधिकांश हालतों में निहायत ही सुखप्रद रही हैं। हिन्दू पति, पत्नियों के भीतर प्रेम का और उन में एक दूसरे के ऊपर भरोसा रखने का, आजीवन भरोसा रखने का जो तरीका चला आया है उस तरीके को हम आज इस क्लोज़ के जरिये एक बड़ा धक्का पहुंचाना चाहते हैं। मैं ला मिनिस्टर साहब से निहायत नम्रता पूर्वक यह प्रार्थना करूंगा कि कृपा करके सामाजिक लाज के बनाने में खेल मत कीजिए, समाज के साथ खिलवाड़ मत कीजिये। समाज एक ढंग से चल रहा है, और बहुत अच्छे ढंग से चल रहा है, हजारों वर्षों से चलता आ रहा है वह और जिस तरह पर चल रहा है वह

दुनिया के किसी भी समाज के विवाह के तरीके से अगर हम उसकी तुलना करें तो हिन्दू समाज के विवाह में जो दृढ़ता है वह साफ़ नज़र आजायगी और दोनों को तराजू पर तौलने में हमारा शादी का तरीका ज्यादा वज़नी और बेहतर नज़र आयागा। इसलिए यह कहना कि समाज में स्त्रियों को यह अधिकार दिये जायें या पुरुषों को यह अधिकार दिये जायें कि शादी करने के बाद जब उनका जी चाहे कोई न कोई बहाना ढूँढ करके वे विवाह का विच्छेद करा लें, तो जिस पवित्र उद्देश्य पर हिन्दू समाज टिका हुआ है उस पवित्र उद्देश्य के हम बहुत ही ख़िलाफ़ जायेंगे।

अभी कुछ दिन पहले दिल्ली की कुछ स्त्रियां मेरे पास आईं, सम्भव है वे और लोगों के पास भी गयी हों। उन्होंने कहा और उन्होंने उस बात की पुष्टि की जो मुझे साधारण तौर पर हिन्दू समाज के भीतर घूमने पर और खुद अपने निर्वाचन क्षेत्र में अपने जिले के अन्दर घूमने पर मालूम हुई और वह यह थी कि वे कहते हैं कि संसद् की कुछ स्त्रियां जिनके अनुरोध पर इस विधेयक में यह डाइवोर्स की धारा डाली गयी है, उन्हें ही सारी स्त्री समाज का प्रतिनिधि न माना जाय, वे सारे स्त्री समाज का प्रतिनिधित्व नहीं करती हैं, उनको सब का प्रतिनिधि न मान कर औरों की भी राय ली जानी चाहिए, इस देश के अन्दर करोड़ों स्त्रियां ऐसी अभी मौजूद हैं जो हिन्दू विवाह पद्धति के पवित्र बंधन को अपना एक बड़ा गौरव मानती हैं।

पिछले चुनाव के अवसर पर अपने निर्वाचन क्षेत्र में जहां कहीं भी मैं गया, मुझे हर जगह इस डाइवोर्स का एक जबर्दस्त विरोध नज़र आया। न सिर्फ़ ऊंचे कास्ट हिन्दू कहलाने वाले लोगों में बल्कि उन

लोगों के भीतर से भी यह आवाज़ आई कि जहां उनके कुछ परम्परागत नियमों के अनुसार यह चीज़ जायज़ कही जाती है, उन्होंने भी इसका विरोध किया। तो उपाध्यक्ष महोदय, मैं इस सदन के सामने निहायत अदब से यह गुज़ारिश करूंगा कि आप जो यह विधेयक बना रहे हैं और उसमें जो यह डाइवोर्स का क्लॉज़ रख रहे हैं तो इस डाइवोर्स के क्लॉज़ से आप क्या भला करने वाले हैं? उससे समाज का क्या भला होने वाला है? यह कहना कि यहां की जितनी स्त्रियां हैं, जितने वैवाहिक सम्बन्ध हैं, उनके भीतर वह सब की सब स्त्रियां पिसी जा रही हैं, मरी जा रही हैं, यह बिल्कुल ग़लत बात है।

श्री धुलेकर (जिला झांसी—दक्षिण) : यह उनके लिए नहीं है।

श्री यू० एस० बुबे : दलील तो यही दी जाती है। तो मैं यह गुज़ारिश कर रहा था कि इस विधेयक में इस धारा से जो लाभ सोचा जा रहा है, उसमें लाभ होने के बजाय बहुत ज्यादा हानि पहुंचने की सम्भावना है। यूरोप के जिन पश्चिमी देशों में तलाक़ की प्रथा जायज़ है, वहां की स्त्रियों में एक आर्थिक स्वतंत्रता है, यहां उनके आर्थिक रूप से स्वतन्त्र न होने के कारण स्त्री समाज का बड़ा ही कल्याण होगा। इस विधेयक की अन्य धाराओं को पास कर देने के बाद आप मोनोगामी की इजाजत दे दीजिये, वह मैं समझ सकता हूं। यह मैं समझ सकता हूं कि आप यह कहें कि स्त्री पुरुष में अगर आपस में न पटे, खास खास हाई क्लेस में आप उन्हें एक दूसरे से अलग रखने की इजाजत दे दीजिये, जैसा कि आपने इस बिल की पहली धाराओं में अभी पास किया है। मैं इस तरह के सुधार समझ सकता हूं, ऐसे

[श्री यू० एस० दुबे]

सुधार करें जिनकी देश में और समाज में बड़ी आवश्यकता है और वह है दहेज की प्रथा को रोकना। हमारी कितनी ही बहनें जो पढ़ लिख करके योग्य होती हैं, उनकी आज शादियां नहीं हो पाती हैं, इसलिए कि उनके माता पिता गरीब हैं, उनको आप सुविधा दीजिये। मैं ने इस सम्बन्ध में एक संशोधन भी धारा १८(ए) बना करके दिया है और मुझे आशा है कि यह सदन और हमारे ला मिनिस्टर साहब उसे स्वीकार करेंगे और वह समाज को आगे ले जाने में और स्त्रियों को आगे बढ़ाने में अधिक सहायक हो सकेगा और मां-बाप को लड़की का होना एक भार साबित न होगा। उस क्लॉज में मैं ने रक्खा है कि :—

"It shall not be lawful in a Hindu marriage to offer or accept at any stage of the ceremony any sum exceeding rupees fifty-one or its equivalent as dowry, gift or present except the ceremonial cloths and ornaments to the bride."

Mr. Deputy-Speaker: That is now clause 18A, I suppose.

Shri U. S. Dube : Yes.

Mr. Deputy-Speaker: This is a new clause. We are only taking up a group of clauses now.

Shri U. S. Dube: We are taking up clauses 13 to 18. I am seeking to introduce a new clause 18A.

Mr. Deputy-Speaker: This was disposed of yesterday.

Shri Rane (Bhusaval): No.

Mr. Deputy-Speaker: The portion relating to dowry etc.?

Shri V. G. Deshpande (Guna): That was new clause 8A.

Mr. Deputy-Speaker: Let hon. Members understand one thing. I am calling upon hon. Members who have had no opportunity, but that does not mean

that they should take the whole time for themselves and not allow other Members who have tabled amendments to speak—I am coming to them next. I shall give five minutes to every hon. Member, except in exceptional cases where I shall extend it by two minutes.

The hon. Member Shri U. S. Dube has already taken about ten minutes. So, he must now conclude.

Shri Dhulekar : rose.

Mr. Deputy-Speaker: I am calling upon Shri Mulchand Dube. I shall call hon. Members who have given amendments, afterwards.

12 Noon

Shri Mulchand Dube: Sanskrit texts have been cited both for and against the divorce. I do not possess an adequate knowledge of Sanskrit and therefore I am not in a position to say as to which of them are right and which of them are wrong. But I can say on the authority of Mayne that divorce was at one stage or the other permitted in Hindu society; it was absolutely given up in later years and we have had no divorce during the last thousands of years. Now the question is whether we should revive that practice of divorce or not.

It has been stated that the Hindu law as it was evolved during the British days does not represent the real Hindu law. It may or it may not, but it has certainly the merit of having settled the law during the last 100 or 150 years. Now the question is, whether you want to unsettle that law, a change for the mere sake of change is not desirable. We must see whether the change that we are making is good for society and whether it is in the interest of society or not. My hon. friend, Mr. Pataskar, in his opening speech stated that marriage was not a sacrament and that he could not find any authority in the text-books for its being called a sacrament. Obviously it is not possible to find the word 'sacrament' in the Hindu *Shastras*. The word sacrament is derived from the latin word *sacramentus* which means sacred. The question, therefore, is

whether marriage should be treated as a sacred bond or whether it should be treated as a mere secular contract for the disposal of property, either movable or immovable. If we reduce it to the state of a secular contract for disposal of movable or immovable property, we shall be degrading marriage to an extent which is not at all permissible or desirable. The marriage is solemnized in the most sacred form with Vedic mantras before a sacrificial fire. Therefore, to say that it is not a sacrament, I submit, is not correct. Now the question is whether in spite of its being a sacrament, divorce should or should not be allowed. I will not quote from the *Shastras*, but I will place before you modern thought. I was reading the *Encyclopaedia Britannica* in which there is an article on marriage. The question arises, what is marriage, what are its implications and what are its obligations for the married couple. Is it a mere authorisation of sexual intercourse? The answer has to be 'no'. Is it a mere means for the production of children? The answer again has to be 'no'. The ideal before the marriage is that the married couple take upon themselves the obligations and the duties of parenthood. Normally, a child takes 21 years to grow to its full stature. During all these 21 years he requires the care, guidance, affection and the rest of both the mother and the father. If during these 21 years, before he has fully grown, the marriage bond is broken, he is deprived of the guidance, care and affection of either one or both of the parents, because in the case of divorce, there is the possibility of both the parents re-marrying. If they re-marry, the result will be that the children will be deprived of that care and attention which they require from their parents and they will not grow up as useful members of society, as they would otherwise have grown.

As in the case of property, marriage does not concern merely the two persons who are marrying. It is a social obligation and to that social obligation the married couple must subordinate their passions and desires for the bene-

fit of the society. Therefore, if they want to separate and if they want to uphold a divorce, it should be remembered that the society has a prior claim upon them, because the children will have to grow up to be useful members of society. Therefore, my submission is that to leave it to the couple whether they will live together or not is not in the interest of society. The individual desires and passions of the couple must be subordinated to the interest of society.

Apart from that, divorce may be successful in the case of very wealthy and successful people, but it will not be in the interests of either the men or the women who do not possess those advantages. Therefore, my submission is that divorce should not be allowed in any case. We must remember that we are proceeding in a manner in which the emphasis is being shifted from the control or regulation of passions and desires to the gratification of them. If we allow divorce, the result will be that the society that we have built up during thousands of years will be disrupted. So, divorce is not desirable from the social or any other point of view.

You must also bear in mind the fact that we are providing for divorce in cases where one of the parties is suffering from a disease which is considered to be incurable. My submission is that the disease which may be incurable today may become curable tomorrow. In the age of science it is not possible for anyone to say that a particular disease is incurable. We daily come across cases where if the disease is considered incurable today it is curable the next day, and if, in the meantime, divorce has taken place, it creates a family disturbance and so it will not redound to the credit of anybody.

Mr. Deputy-Speaker: I rang the bell twice and I have allowed more than ten minutes to the hon. Member.

Shri Mulchand Dube: I shall finish in two minutes. We are building homes and hospitals for lepers and also for other people suffering from

[Shri Mulchand Dube]

such bad and incurable diseases. If we infuse among the people the tendency to divorce when an illness occurs, then where will we find nurses for these hospitals and other places for the afflicted? So, a spirit of public service is also being taken away by this provision for divorce. As my time is over, I will conclude and say that the divorce clause neither conforms to the ideals of society nor it is for the benefit of those who are concerned in the matter.

Shrimati Jayashri : The other day also I said that divorce does not in any way affect the sacramental character of Hindu marriage but only it challenges in some measure the privileges claimed by a Hindu husband under the sacrament of marriage. At present, as I said, the sanctity of marriage is only to be observed by a woman. I said it is one-sided and it is the duty of the awakened women to spot out the evils that exist in society, and that is why we who want to support this clause think that by this clause we will be able to do away with some of the evils that at present exist in our society.

A student of sociology, who is Reader in Sociology in the University of Bombay, has provided some figures which show that many educated women who are suffering due to this onerous law have expressed their opinion in favour of divorces. I will read out these figures. The author is Mr. K. M. Kapadia. The survey was published in 1953.

Mr. Deputy-Speaker: What is the title of the book?

Shrimati Jayashri: *The Hindu marriage and Divorce Bill*. He has written on this. He says:

"In a recent inquiry undertaken by me to ascertain the views of graduate teachers on some of our social problems, I found that of the 316 teachers, 273, that is, 86 per cent, looked upon bigamy as undesirable. There were only 29 teachers, less than 10 per cent, who appeared to favour it. It is interesting to note that 86 out of 104, that is, 82 per cent of the

older generation, (men above 35 years of age) think bigamy is undesirable.

Similarly, 57 per cent of the teachers of all ages opined in favour of divorce and they recommended divorce not only for impotency or incurable disease but even for cruelty, harassment, wide age difference between partners, economic inefficiency and temperamental disagreement".

These figures indicate the state of our existing laws in marriage life in Hindu society.

When I am supporting this clause, I think we should not make the ground so easy. Some of the Members here are afraid that men and women will rush to the courts and that is why in my amendment No. 70 I have suggested that there should be a machinery for reconciliation before the court gives a decree of divorce, and to this effect I saw another amendment also in which this machinery has been defined. I hope that the Minister will accept this amendment so that there could be some provision for bringing the couple together before the decree is finally decided by the court.

Another amendment which I have suggested is No. 64 in which I have sought to substitute "four years" for "seven years". The clause reads as follows:

"(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive; or"

I feel that this waiting for seven years in the present conditions when communications are so easy, when we have aeroplanes, when we have railways and when we have ships, is too long a period. If a person is not heard of as being alive, it is easy to find out whether he is alive or not within a period of three or four years. So, the period of seven years is a long one. I would suggest that this period should be reduced to four years. I hope these

two amendments will be accepted by the Minister. I support the clause.

Shrimati Renu Chakravarty: I want to repudiate with all the emphasis at my command the views of those who have been opposing this Bill and saying that our aim is that there should be a divorce for every marriage.

Pandit K. C. Sharma: It is necessary.

Shrimati Renu Chakravarty: I hope this House will agree it is the most unworthy remark to be made by anybody. I feel that it must be categorically stated that when we support this clause, we do it because we see the things that happen in life. It has been said that if we pass this clause on divorce, it will be hard upon the women. Because the people have the good of the women at heart they are opposing this clause on divorce! The very pamphlet which has been given to us by Shri N. C. Chatterjee and his organisation says that out of the number of cases in the Bombay High Court which they have cited, the largest number is from women, and half the number is on cases of desertion. These are not my figures. I do not know how far they are right or wrong, I do not vouch for them, but they are furnished by those who are themselves putting these cases against divorce. I am quoting them: I am quoting the devil. So, I would like this question of desertion also to be equally considered with the other grounds for divorce.

We see every day hard cases of desertion all around us. Take one instance. A girl has been deserted for whatever reason it be: whether it is because she does not look well or because her parents have not been able to give the amount of dowry which she was bartered for. After she is deserted, she is not taken back to her husband's family for years together. She has to live with her family. She does not have an easy time even in her father's family because there are economic hardships. Also the sister-in-law is there who may not like to maintain her etc. So, are we to say that that girl must be made to stay in that condition all her life?

Will she be allowed to become the object of being buffeted about by any person? If it so happens that she is left unprotected in that situation, and suppose she wants to marry again and start life afresh are you going to say: "No; you are doomed for life?" I do plead with this House that this is an absolutely wrong attitude to take. It is an absolutely correct position to say: "If in your married life you have not been able to have a home life, you will be allowed to marry again and to have a home life."

If you take the question of cruelty, again the same thing happens. I do say that there are aberrations in society. There are a very few and small number of people who may take advantage of this. I do not rule it out. I do not rule out aberrations with regard to any Bill that you pass. There are people in society, very high people, who however many income-tax laws you may have, do they not evade them? Therefore, it is no use arguing on the basis of aberrations. Those are the worst people in society. It is no use arguing that because they will take advantage of it, therefore, we should not have a clause at all and bar all people for all time. We see that there are cases after cases, many many cases in which we have thought that divorce is perfectly justified. Therefore, I would like to plead to this House to look upon it from this point of view, and I say that the clause about desertion should also be included in these grounds of divorce.

Now, what has happened? They say there are so many hundreds of cases which have been brought up before the courts in Bombay. I do not know how many have been the number of cases in the first year; how many have been the number in the second year and how many in the third year. But, normally, I will tell you, when this Bill is passed, there will be a large number of cases. Why? Because there is such a long accumulation. I remember, when I was quite young, then for the first time when the Rau Committee was taking witnesses—that was the time when I had started my

[Shrimati Renu Chakravartty]

first experience of working amongst women's organisations—10 years ago, there were certain women who had given witness before that Committee. Even today they are waiting for this Bill to be passed. I know so many cases which come up before my mind where the wives have been deserted by husbands for 7 or 8 years. Some of them want to marry again. Let us be honest about it. They do want to marry again. What is wrong with it? Nothing. We allow so many and shut our eyes to many other ugly things that happen in life. But, when a person says: "I want to marry again; I want to have family life; I want to have children and other normal things which all of you are having," then I think it must be allowed. (Interruption) We should look into our hearts before we start throwing stones at other people, that is what I want to say to my friends who make these interruptions. Therefore, I do say that we should insert this clause of desertion, if it is a desertion of say about 3 years. There is one amendment which we have put stating 3 years as the period. I would say, even if it so commends to you that it must be a desertion for 5 years, if it is a desertion of that period of time, it must be a direct cause for divorce.

Now, what will happen? A person has been deserted for 5 years. She will have to go for judicial separation; 2 years again and then again one year, the time lag between the decree and the time she marries. She might well be an old lady by the time you pass this and there may be no necessity for her to have a divorce at all. Therefore, I do feel that desertion and cruelty are two causes in which the most justifiable grounds are there and it is these two causes which we have left out. First you give judicial separation and then when judicial separation is given you have to wait again for two years. Then you go in for divorce. This is impossible. You are talking about women in villages and weeping for them. Could you imagine a woman who

fears and trembles to go to court once, to go to the court twice. I would plead very very earnestly—I am not going to talk about other amendments so much—and very seriously for including desertion and cruelty as direct causes for divorce. About the specific number of years I am not so very particular, but I want that desertion and cruelty must be put as direct causes for divorce.

Now, about 'unsound mind' and leprosy. I will not go too much into it. Here in the clause it is given that it must be "incurably of unsound mind". I say it is impossible to prove whether insanity is curable or not. Nobody in medical science can say that a person is incurably of unsound mind. Cases have been known where after so many years—3, 4 or 5 years—persons have come back to sanity. That is possible. Therefore, there is no question of incurability. Then again, it is impossible to prove whether a person is suffering from a virulent and incurable form of leprosy. Virulent forms are often not quite as dangerous as other forms of leprosy. This is what I find. All doctors say so. By saying 'virulent forms'—if you think these are words which should be based as grounds of divorce, then, these adjectives, I think do not make much sense.

Here again, I would like to take up this question about leprosy. A resolution was taken by the All India Leprosy Workers' Conference held at Puri and their opinion was that leprosy should not be a ground for divorce because it is curable. Again, the Director-General of Health Services gave his opinion on it. He said—I will read out this portion:

"Under certain conditions a person suffering from leprosy of the non-infective type can be allowed to work in an office along with others and may attend social gatherings or may even live in a family under certain restricted conditions of living.

The chances of infection in the association of infected persons with the non-infected, under the conditions stated, are insignificant as compared to the chances of infection between a married couple. If any one of the partners in marriage be unwilling to undergo health hazards of the type resulting from diseases like leprosy he or she should not be forced to run any risk of acquiring the painful and disabling malady."

Sir, under permissive law I do feel that this clause should remain and that we should not delete it but we should take away these adjectives which do not make much sense—about virulent forms of leprosy.

Lastly I want to say about my amendment No. 71. Sir, I have heard the hon. Law Minister on clause 16 about legitimacy of children of void and voidable marriages. The hon. Law Minister has already stated that he would like to bring in a law about legitimacy on the lines of some law in England. I do not know anything about that particular law to which he has referred. But I do feel this. My hon. friend Shri Raghavachari who was with me in the Select Committee too feels strongly about it in the opposite way. In that clause 16, there is discrimination against the children although we are labelling the children as legitimate, in the way of inheritance to property of a joint family. Therefore, I think this proviso should go. That is what I would like to urge upon this House.

Mr. Deputy-Speaker: The following are the selected amendments to clauses 13 to 18 of the Hindu Marriage Bill, which the hon. Members have indicated to be moved subject to their being otherwise admissible:

Clause No. No. of amendments

13 190, 328, 372, 59, 329, 11, 94 (same as 117, 374, 375, 330, 142, 376, 98, 377, 34, 378, 333, 242, 379, 380, 334, 35, 335, 244, 383, 104, 36, 64, 384 (same as 64), 336, 385, 106, 338 (same as 106), 386, 143, 107, 387,

Clause No. No. of amendments

12, 341, 340, 342, 388 (same as 342) 389, 390, 13, 69, 144, 164, 246, 391.

14 14, 344, 197, 247, 394, 395, 70, 396-
New Clause 14A. 198, 345, 397.

15 398, 346, 112, 248, 249, 347, 145

17 200

18 400, 401, 254, 255, 349 (same as 255), 352, 354, 258, 353.

New Clause 18A 17, 116, 201

New Clauses 18.

18A, 18B, 18C.

Clause 13.—(Divorce)

Shri Deshpande: I beg to move:

In page 8, for clause 13, substitute:

"13. Unilateral registration of a sacramental marriage under the Special Marriage Acts—Any marriage solemnized, whether before or after the commencement of this Act, on a petition presented by the wife, to the District Court, may, on the order passed by the Court, be registered under Special Marriage Act on any of the following grounds, namely, the husband—

- (i) has ceased to be a Hindu by conversion to another religion;
- (ii) has not been heard of as being alive for a period of seven years or more by those persons who would have naturally heard of it, had that party been alive.
- (iii) has treated his wife with such cruelty as to cause a reasonable apprehension that it will be harmful for petitioner to live with the other party; and
- (iv) has deserted the petitioner for a continuous period of not less than seven years immediately preceding the presentation of the petition."

Shri S. L. Saksena: I beg to move:

In page 8, for clause 13, substitute:

"13. Unilateral registration of a sacramental marriage under the

[Shri S. L. Saksena.]

Special Marriage Act, 1954 (43 of 1954).—Any marriage solemnized, whether before or after the commencement of this Act, on a petition presented by the wife to the District Court, may, on the order passed by the court, be registered under the Special Marriage Act, 1954 (43 of 1954) on any of the following grounds, namely, that the husband—

- (i) has ceased to be a Hindu by conversion to another religion;
- (ii) is habitually living in adultery;
- (iii) has not been heard of as being alive for a period of seven years or more by those persons who would have naturally heard of it, had that party been alive;
- (iv) has treated his wife with such cruelty as to cause a reasonable apprehension that it will be harmful for petitioner to live with the other party; and
- (v) has deserted the petitioner for a continuous period of not less than seven years immediately preceding the presentation of the petition."

Shri Lokenath Mishra (Puri): I beg to move:

In page 8, for Clause 13, substitute:

"13. Divorce.—Any marriage solemnized, whether before or after the commencement of this Act, may, unilaterally and in the same manner as it was solemnized be dissolved when either party finds it to be of exceptional hardship or of exceptional depravity and as such intolerable".

Shri Dhulekar: I beg to move:

In page 8, lines 5 to 7, for "on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—" substitute:

"be dissolved either in accordance with the customary law prevailing in the community of the

parties to the marriage, or on a petition presented by either the husband or the wife, by a decree of divorce on the ground that the other party—"

Pandit K. C. Sharma: I beg to move:

In page 8,

for lines 7 to 41, substitute:

"on the ground that there is sufficient cause considering the way of living, custom and good conscience of the people for such a dissolution"

Shri Rane: I beg to move:

In page 8,

omit line 8.

Shri Bogawat (Ahmednagar South): I beg to move:

In page 8,

omit line 8.

Shri Lakshmayya (Anantapur): I beg to move:

In page 8,

for line 8, substitute:

"(i) is leading an immoral life; or".

Shri Sivamurthy Swami: I beg to move:

In page 8, line 8,

omit "living".

Shri N. Rachiah (Mysore-Reserved Sch. Castes): I beg to move:

In page 8, line 8,

for "in adultery" substitute:

"an adulterous life"

Shri U. M. Trivedi (Chittor): I beg to move:

In page 8,

for lines 9 and 10 substitute:

"has ceased to follow the religion to which he or she belonged at the time of marriage"

Shri V. G. Deshpande: I beg to move:

In page 8,

for lines 9 and 10, substitute:

"(ii) has changed his or her religion and has embraced

any other religion mentioned in sub-section (1) (c) of section 2; or".

Shri Bogawat: I beg to move:

In page 8, line 10,
after "religion" add:

"except that of Buddhist, Jain or Sikh religion".

Shri Sivamurthi Swami: I beg to move:

In page 8, line 11,
for, "of unsound mind" substitute "mad".

Shri Khardekar (Kolhapur cum Satara):

In page 8, lines 11 to 13,

omit "for a continuous period of not less than three years immediately preceding the presentation of the petition".

Shri K. L. More: (Kolhapur cum Satara—Reserved—Sch. Castes): I beg to move:

In page 8, line 12,
for "three years" substitute "one year".

Shri N. Rachiah: I beg to move:

In page 8, line 12,
for "three years" substitute "two years".

Shri Bibhuti Mishra (Saran cum Champaran): I beg to move:

In page 8,
(i) in line 12,
for "three years" substitute "five years";

(ii) in line 14,
for "three years" substitute "five years"; and

(iii) in line 17,
for "three years" substitute "five years".

Shri R. N. S. Deo (Kalahandi-Bolangir): I beg to move:

In page 8,
omit lines 14 to 16.

Shri K. L. More: I beg to move:

In page 8, line 14,
for "three years" substitute "one year".

Shri N. Rachiah: I beg to move:

In page 8, line 14,
for "three years" substitute "two years".

Shri Khardekar: I beg to move:

In page 8,
omit lines 17 to 19.

Shri N. Rachiah: I beg to move:

In page 8, line 17,
for "three years" substitute "two years".

Shri Bibhuti Mishra: I beg to move:

In page 8, line 19,
after "form" insert:
"to be certified by civil surgeon".

Shri Sivamurthi Swami: I beg to move:

In page 8, line 20,
after "entering" insert "'sanyasi' life or".

Shri Bogawat: I beg to move:

In page 8, line 21,
after "order" add:
"and that three years have passed since then".

Shri Khardekar: I beg to move:

In page 8, line 23,
for "seven years" substitute "three years".

Shrimati Jayashri: I beg to move:

In page 8, line 23,
for "seven years" substitute "four years".

Shri Sivamurthi Swami: I beg to move:

In page 8, line 23,
for "seven years" substitute "four years".

Shri N. Rachiah: I beg to move:

In page 8, line 23,
for "seven years" substitute "five years".

Shri K. L. More: I beg to move:

In page 8, line 23,

for "seven years" substitute
"one year".

Shri Bogawat: I beg to move:

In page 8, line 25,

for "two years" substitute
"one year".

Dr. Rama Rao (Kakinada): I beg to move:

In page 8, line 25,

for "two years" substitute
"one year".

Shri K. L. More: I beg to move:

In page 8, line 25,

for "two years" substitute
"six months".

Shri U. M. Trivedi: I beg to move:

In page 8,

after line 27, add:

"Provided this ground shall not apply if the separation has been granted on the ground specified in clause (g) of sub-section (1) of section 10."

Shri Bogawat: I beg to move:

In page 8, line 29,

for "two years" substitute
"one year".

Shri K. L. More: I beg to move:

In page 8, line 29,

for "two years" substitute
"six months".

Shri Rane: I beg to move:

In page 8,

after line 30, add:

"(x) would not lead a happy married life with the respondent for any just and sufficient cause or ground in the discretion of the court."

Dr. Rama Rao: I beg to move:

In page 8,

after line 30, insert:

"(x) or, has deserted the petitioner for a continuous period

of not less than three years immediately preceding the presentation of the petition."

Shri N. B. Chowdhury (Ghatal): I beg to move:

In page 8, and

(i) line 30, add at the end "or";

(ii) after line 30, add:

"(x) has deserted the petitioner for a continuous period of not less than five years immediately preceding the presentation of the petition; or

(xi) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the other party, and the petitioner has accordingly lived a separate life for a period of at least five years after such treatment being meted out to the petitioner for the first time."

Shri Raghavachari: I beg to move:

In page 8,

omit lines 31 to 41.

Shri Lakshmayya: I beg to move:

In page 8,

omit lines 31 to 41.

Shri R. N. S. Deo: I beg to move:

In page 8,

omit lines 40 and 41.

Shri B. N. Misra (Bilaspur-Drug-Raipur): I beg to move:

In page 8, line 41,

omit "or bestiality".

Shri Rane: I beg to move:

In page 8,

after line 41, add:

"(iii) that the husband has neglected or has failed to provide for her maintenance after demand for a period of two years or above; or

(iv) that the husband has been sentenced to imprisonment for a period of four years or more if

she is below the age of thirty-five years."

Shri Dhulekar: I beg to move:

In page 8,

after line 41, add:

"(3) Nothing in this section shall affect the right of the parties to the marriage to dissolve the marriage in accordance with the customary rites of the community to which both of them belong or dissolve it by a duly registered deed of divorce."

Shri Dhulekar: I beg to move:

In page 8,

after line 41, add:

"(3) The parties to a marriage may agree in writing to refer their case for dissolution of marriage to an arbitrator or arbitrators appointed by them, and such award, which shall be delivered in writing shall be legally binding on the parties:

provided that the wife may, within a period of 3 months from the date of the award, apply to the court having jurisdiction under section 19 for the cancellation of the award on the ground that the agreement to arbitration was obtained by fraud or undue influence, or that the award was unfair and unjust or was delivered without due investigation or without giving her full opportunity for producing evidence. The court shall, after giving the parties full opportunity for producing evidence and also after taking such further evidence as it may deem necessary, confirm the award, or cancel the same and pass such orders as it is empowered to pass under this Act."

Shri Kelappa (Ponnani): I beg to move:

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In page 8,

after line 41, add:

"(3) The husband and the wife may also jointly present a petition for the dissolution of their marriage by decree of divorce on the ground that they have mutually agreed to dissolve their marriage."

Shri Bibbuti Mishra: I beg to move

In page 8,

after line 41, add:

"(3) Any marriage solemnized, whether before or after the commencement of this Act may not, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce if the parties have minor or major child or children."

Shri Lakshmayya: I beg to move:

In page 8,

after line 41, add:

"(3) The husband and wife may jointly present a petition for the dissolution of their marriage by decree of divorce on the ground that they have mutually agreed to the dissolution of their marriage."

Clause 14.— (No petition for divorce to be presented within three years of marriage)

Shri Rane: I beg to move:

In page 8, line 42 and in page 9, wherever they occur in the clause,

for "three years" substitute "two years".

Shri N. Rachiah: I beg to move:

(i) In page 8, line 42,

for "three years" substitute "five years"; and

(ii) In page 9, line 3,

for "three years" substitute "five years".

Shri U. M. Trivedi: I beg to move:
In page 9,

after line 4, insert:

"Provided that there shall be no bar to such presentation if the ground alleged is as provided in clause (ii) of sub-section (1) of section 13".

Shri Bhakt Darshan (Garhwal Distt.—East cum Moradabad Distt.—North-East): I beg to move:

In page 9,

omit lines 5 to 25.

Shri B. N. Mishra: I beg to move:

(1) In page 9, lines 13 to 15,

omit 'may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the expiry of three years from the date of the marriage or'.

(2) In page 9, line 15,

for "may" substitute "shall".

Shrimati Jayashri: I beg to move:

In page 9, line 25,

after "parties" insert "by sending them to an arbitrator".

Shri Lakshmayya: I beg to move:

In page 9, line 25,

after "parties" insert "by sending them to the gentlemen of the locality who are interested in the welfare of their family".

New Clause 14A

Shri V. G. Deshpande: I beg to move.

In page 9,

after line 25, insert:

"14A. No petition for divorce will be presented after the period of ten years of marriage: "Notwithstanding anything contained in this Act it shall not be competent for any Court to entertain any petition for dissolution of a marriage by decree for divorce after the period of ten years from

the solemnization of the marriage."

Shri Dabhi (Kaira North). I beg to move:

In page 9,

after line 25 add:

"14A. No petition for divorce after the period of twenty years of marriage.—Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce after the period of twenty years from the solemnization of the marriage, on any of the following grounds, namely:—

(1) that the other party has been of unsound mind;

(2) that the other party has treated the petitioner with cruelty;

(3) that the other party has been suffering from any disease;

(4) that the other party is impotent.

Shri Lakshmayya: I beg to move:

In page 9,

after line 25 add:

"14A. No petition for divorce after a period of twenty-five years of marriage and in certain cases.—Notwithstanding anything contained in this Act, it shall not be competent for any court, to entertain any petition for dissolution of marriage by a decree of divorce,—

(i) if a period of twenty-five years has elapsed from the date of the solemnization of the marriage; or

(ii) the parties have one or more children as a result of their peaceful conjugal life for a period of fifteen years; or

(iii) in the absence of children the husband is having an age of fifty years and the wife, forty-five years on the date of presentation of the petition."

Clause 15.— (Divorced persons when may marry again)

Shri R. N. S. Deo: I beg to move:

In page 9,

omit lines 33 to 36.

Shri N. Rachiah: I beg to move:

In page 9, line 34,

omit "at least".

Shri Rane: I beg to move:

In page 9, lines 34 and 35,

for "one year has" substitute
"three months have".

Shri Bhakt Darshan: I beg to move:

In page 9, lines 35 and 36,

for "from the date of the decree
in the court of the first in-
stance" substitute

"from the date the matter has been
finally disposed of by the highest ap-
pellate court".

Shri Bibhuti Mishra: I beg to

In page 9, after line 36, add:

"Provided further that it shall
not be lawful for the respective
parties to marry again if they
have male or female child or
children."

Shri N. C. Chatterjee: I beg to move:

In page 9,

after line 36, add:

Provided further that it shall
not be lawful for the parties who
had committed adultery and
which adultery was the ground
on which the divorce was grant-
ed, to marry each other."

Shri U. M. Trivedi: I beg to move:

In page 9,

after line 36, add:

Notwithstanding anything con-
tained herein, where the ground
of divorce has been change of
religion, the parties may marry at
any time after the decree is made
final."

Clause 17.— (Punishment of bi-
gamy)

Shri V. G. Deshpande: I beg to
move:

In page 10,

after line 5, add:

Provided that such marriages
performed after obtaining per-
mission as specified in Section
18A shall not be void."

Clause 18.— Punishment for con-
travention of certain other conditions
etc.)

Shri Nand Lal Sharma (Sikar): I
beg to move:

(1) In page 10, line 9,

omit "(iii)".

(2) In page 10,

omit lines 11 to 14.

Shri Bhakt Darshan: I beg to move:

(1) In page 10, line 12,

for "clause (iii)" substitute
"clauses (iii) and (viii)".

(2) In page 10, line 13,

for "fifteen days" substitute
"three months".

Shri N. Rachiah: I beg to move

(1) In page 10, line 13,

for "fifteen days" substitute
"three months".

(2) In page 10, line 16,

for "simple" substitute "rigo-
rous".

(3) In page 10, line 17,

for "one month" substitute
"three months".

Shri Bhakt Darshan: I beg to move:

In page 10,

after line 21 add:

"(d) in the case of a contraven-
tion of the condition specified in
clause (vii) of section 5, with
simple imprisonment which may
extend to three months, or with
fine, which may extend to one
thousand rupees, or with both."

Shri U. M. Trivedi: I beg to move:

In page 10, lines 16 and 17,

for "simple imprisonment which may extend to one month, or" substitute:

"rigorous imprisonment which may extend to seven years, and"

New Clause 18A

Shri Rane: I beg to move:

In page 10,

after line 21, insert:

"18A. *Marrying a second wife during the life-time of former wife.*—(1) Notwithstanding the provisions of this Act to the contrary, a husband may marry a second wife during the life-time of his former wife and such marriage shall not be deemed to be void or voidable and also punishable under sections 494 and 495 of the Indian Penal Code, 1860 (XLV of 1860):

Provided that the husband obtains an order in writing permitting him to do so on a petition to the District Court under sub-section (2) of this section.

(2) The District Court may permit a husband to marry another wife during the life-time of his former wife:

(a) if the former wife—

- (i) has been disabled;
- (ii) has been suffering from a loathsome disease;
- (iii) has been childless for fifteen years after marriage and consents to such marriage;

(b) on any just, reasonable and sufficient ground or cause in the discretion of the court;

(3) (a) The court may in the interest of the former wife, make any order of maintenance, residence etc., as a condition precedent or otherwise, in this proceeding.

(b) The order passed under sub-section (3) (a) of this section shall be executable as a decree."

Shri U. S. Dube: I beg to move:

In page 10,

after line 21, add:

"18A. (a) It shall not be lawful in a Hindu marriage to offer or accept at any stage of the ceremony any sum exceeding rupees fifty-one or its equivalent as dowry, gift or present except the ceremonial cloths and ornaments to the bride:

(b) Any person contravening the provisions of clause (a) of this section shall be liable to be punished with simple imprisonment for a term not exceeding six months or with fine or with both.

Explanation.—Ceremony referred to in this section includes the tika or tilak ceremony preceding marriage."

Shri V. G. Deshpande: I beg to move:

In page 10,

after line 21, add:

"18A. *Marrying a second wife during the life-time of former wife.*—(1) Notwithstanding the provisions of this Act to the contrary, a husband may marry a second wife during the life-time of his former wife and such marriage shall not be deemed to be void or voidable or punishable under section 494 and 495 of the Indian Penal Code, 1860 (XLV of 1860):

Provided that the husband obtains an order in writing permitting him to do so on a petition to the District Court under sub-section (2) of this section.

(2) The District Court may permit a husband to marry another wife during the life-time of his former wife—

(a) if the former wife—

- (i) has been physically disabled;

(ii) has been suffering for a period of not less than three years from virulent and incurable form of leprosy;

(iii) has been incurably of unsound mind for a continuous period of not less than three years;

(iv) has been childless for twelve years after marriage and consents to such marriage; and

(b) on any just and reasonable ground or cause in the discretion of the Court:

(3) The court may in the interest of the former wife, make any order regarding her maintenance, residence etc., as a condition precedent or otherwise, in this proceeding.

(4) The order passed under sub-section (3) of this Section shall be executable as a decree."

New Clauses 18A, 18B and 18C

Shri Dabhi: I beg to move:

In page 10,

after line 21, insert:

'18A, (1) Power to issue injunction prohibiting marriage in contravention of this Act.—(1) Notwithstanding anything to the contrary in this Act, the court may, if satisfied from information laid before it through a complaint or otherwise that a marriage in contravention of the provisions of clauses (iii), (iv), (v) and (vi) of section 5 of this Act, has been arranged or is about to be solemnized, issue an injunction, against any person mentioned in section 18 of this Act, prohibiting such marriage.

(2) The Court may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made under sub-section (1).

(3) Whoever, knowing that an injunction has been issued against him under sub-section (1) of this section, disobeys such injunction

shall be punished with imprisonment of either description for a term which may extend to three months and with fine which may extend to one thousand rupees.

18B. Jurisdiction under this Act.—Notwithstanding anything contained in section 190 of the Code of Criminal Procedure, 1898 (V of 1898), no court other than that of a presidency magistrate or a magistrate of the first class shall take cognizance of, or try, any offence under this Act.

18C. Mode of taking cognizance of offences.—No court shall take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed."

Mr. Chairman: All these amendments are now before the House.

श्री टंडन (जिला इलाहाबाद-पश्चिम) : यह विषय समाज की एक पुरानी प्रथा को बदलने का, एक बहुत गम्भीर विषय है। मैं किसी चीज के बदले जाने का विरोधी नहीं हूँ। पाटस्कर जी ने जो उस दिन अपना भाषण दिया उसके ३।४ भाग से मैं सहमत हूँ अर्थात् मैं यह मानता हूँ कि समय के अनुसार प्रथाएँ बदलती हैं, धर्म बदलता है। समय भेदेन धर्म भेदः। अवस्था भेदेन धर्मभेदः। यह प्राचीन वाक्य है। समय के बदलने से धर्म बदलता है, अवस्था के बदलने से, स्थितियों के बदलने से धर्म बदलता है। यह बिलकुल सही है। मैं इस बन्धे हुए समय में और अधिक इस विषय में नहीं जा सकता।

मैं इस बात के साथ पूरी तरह सहमत हूँ कि हमारे प्राचीन लोग केवल पुराण पंथी नहीं थे। सम्भव है पाटस्कर जी से इस विषय पर मेरा कुछ अन्तर हो। वे पुराण पंथी नहीं थे, वे बुद्धिवादी थे प्राचीन समय से हमारे यहाँ बुद्धि की माहुरा रही है। जब एक बड़े ऋषि इस संसार को छोड़ने लगे तो उन के शिष्य उन के पास गये और पूछने लगे कि महाराज अब वेदों का अर्थ

[श्री टंडन]

कौन करेगा, किस ऋषि के पास आप हमें भेजते हैं। इस पर उस ऋषि ने कहा :

तर्कोवैऋषिरुक्त ।

तर्क ही ऋषि है। तर्क के सामने शास्त्र झलक रह जाते हैं। शास्त्र की मर्यादा तभी तक है जब तक तर्क उनके साथ है। इसी लिये कहा है, स्मृति का एक पुराना वाक्य है :—

केवल शास्त्रमाश्रित्य न कर्तव्यो विनिर्णयः ।
केवल शास्त्र का आश्रय लेकर कर्तव्य का निर्णय नहीं हुआ करता ।

युक्तहीनविचारे तु धर्महानिः प्रजायते ॥

जहां युक्ति नहीं है, लाजिक नहीं है, रीजन नहीं है, वहां धर्म की हानि होती है। प्राचीनकाल में भारतवर्ष में हमारे ऋषि, मुनि भी कोई एक शास्त्र को पकड़ कर नहीं बैठ गये थे बल्कि उन्होंने तथ्य और काल के अनुसार धर्मशास्त्रों की रचनाओं कीं और परिवर्तन किये और हमारा देश तो सदा से ही बुद्धिवादी और तर्कवादी रहा है।

“ नास्ति मुनिर्यस्य मतिर्न मित्रा । ”

यहां ऐसा कोई मुनि नहीं है जिसकी मति मित्र न हो। सदा से हमारा देश ताकिक है और बुद्धिवादी रहा है। इस बात के पक्ष में मैं एक नहीं अनेकों प्रमाण दे सकता हूँ कि हमारा देश बुद्धिवादी है। हमारे देश में मनु के बाद याज्ञवल्क्य आये और उसके बाद इतनी स्मृतियां बनीं। सी से ऊपर रभूतियों का बनना ही इस बात का प्रमाण है कि हमारा देश एक तलैया नहीं है, हमारा धर्म तलैया नहीं है कि जिसके भीतर हृदय बंध गये हों। समय के अनुसार हमारे ऋषि-ओं और मुनियों ने समाज को स्मृतियां बना कर के दीं। इस तरह इतने धंध में मैं आपसे सहमत हूँ। पर साथ ही साथ यह स्मरण रखिये कि हमारे देश की कुछ

मौलिक मर्यादाएं हैं, उन मर्यादाओं को भी हमें समझना है, उनके मूल में कुछ सार है। इनमें से एक मर्यादा पतिव्रत धर्म की भावना है और वह आदर्श और पवित्र भावना आज भी हमारी बहनों में विद्यमान है। पतिव्रत धर्म का नाम मैं नहीं जानता कि भारत को छोड़ कर और कहीं दुनिया में भी है। सम्भव है हमारी आधुनिक स्त्रियां इसे सुनकर कुछ हंस भी दें, परन्तु हमारे धर्म का एक अंग पतिव्रत है जिसका अनुवाद अंग्रेजी में नहीं हो सकता। हमारे पुराने बड़ भाई स्वर्गीय श्री एंड्रयूज ने एक बार कहा था कि मैं संसार में चारों ओर घूमा और मैंने देखा कि जिस तरह से स्त्रियों का हमारे देश में पतिव्रत धर्म है, उन्होंने उसके लिये चेस्टिटी शब्द प्रयुक्त किया था, वह आदर्श मैंने कहीं नहीं पाया। सम्भव है कि कुछ उसके कारण कष्ट भी होता हो। हमारी बहन श्रीमती रेणु चक्रवर्ती ने डाइवोर्स के पक्ष में यह दलील दी कि अगर कहीं पर उसका गलत इस्तेमाल होता है, तो वह कोई कारण डाइवोर्स को न रखने के लिए नहीं हो सकता। मैं उनसे पूछना चाहता हूँ कि क्या उनकी इस दलील को दूसरी तरह से नहीं रक्खा जा सकता कि अगर विवाहित स्थिति में कोई ऐसे लुच्चे आदमी है जो बुरी स्थिति पैदा करते हैं तो क्या उन चन्द अपवादों के कारण आप विलकुल समाज की रूढ़ियां बदल दें। यह मेरी बहन की दलील दूसरी तरह से भी सामने रखी जा सकती है। मैं इसको गम्भीर विषय समझता हूँ। आपने सेक्रमेंट की चर्चा की। हमारे यहां उसको संस्कार कहते हैं।

श्री प.टंस्कर : हमको मालूम है।

श्री टंडन : अगर आपको यह मालूम है तो फिर सेक्रमेंट की बात क्यों करते हैं,

उसको आप छोड़ दें और संस्कार को मानिये, सेक्रेमेंट के माने हैं, सेक्रेड। यह तो हम सब जानते हैं कि विवाह हमारा एक संस्कार है और हमारे यहां उसकी बड़ी महिमा है। हमारे यहां पति और स्त्री का जो सम्बन्ध है वह पवित्र सम्बन्ध माना गया है और जैसे मने कहा पातिव्रत्य का बड़ा ऊँचा स्थान माना गया है। अरे ! क्या इस समय में आपसे आदर्शों की बात करूं ? मैं तो आप से कहूंगा कि अगर आप इन आदर्शों की बातों की अवहेलना करते हैं, और केवल इस शरीर को और शरीर की आवश्यकताओं को ही देखते हैं, तब फिर आप We love but while we may उस आदर्श के अनुयायी भी हो सकते हैं। क्या वह भी कोई आदर्श है और अपनाने योग्य है ? मैं तो कहूंगा कि वह पशुवत आदर्श है कि We love but while we may यह भावना हमारे आदर्श के आज से नहीं हमेशा से विलकुल विपरीत रही है। हमारा तो आदर्श कुछ और ही रहा है। मुझे एक पुरानी कविता की यह पंक्ति याद आ गयी। मैं पूरी कविता इस समय नहीं सुनाऊंगा, जिन्होंने इस कविता को पढ़ा है उन्हें उस पंक्ति को सुनकर और पंक्तियां भी याद आ जायेंगी। हमारे देश ने इस पशुवत प्रणाली को स्वीकार नहीं किया। विवाह सम्बन्ध क्या है और विवाह पद्धति की आवश्यकता क्या है ? हमारे देश के कुछ आदर्श हैं। हमारे देश के जो मौलिक सिद्धान्त हैं, हमारे देश की जो स्मृतियां हैं, उनमें हमारे आदर्श हैं। हमारा एक आदर्श यह है :

पतिव्रता मैली भली, काली, कुबिल,
कुरूप ।

पतिव्रता के रूप पर वारूँ कोटि
सरूप ॥

इसी आदर्श को आधार मानकर हमारे
धिनियम बनने चाहिएं। पतिव्रता स्त्री भले

ही मैली हो, काली हो, और कुरूप हो परन्तु हम
करोड़ों सफेद चेहरों, मूलायम चेहरों और
शृंगारवान चेहरों को एक पतिव्रता स्त्री के
चरणों पर बार सकते हैं। यह हमारे देश का
आदर्श रहा है और इस आदर्श को आज हम
भूल नहीं सकते। यह इसी देश का आदर्श था
कि एक भारतीय रमणी जो जानती है कि
मेरा भावी पति आज से बारह महीने बाद
मरने वाला है, ऐसा विश्वास है कि वह
मरेगा, परन्तु जब एक बार वर लिया तो
वह इसी पर दृढ़ रही कि वही मेरा पति है
और उसी से मेरा विवाह होगा। यह कथा
आपके ही देश की है, दूसरे संसार के किसी
देश में ऐसी कथा आपको सुनने को नहीं
मिलेगी ।

रामायण हमारे देश का एक पवित्र ग्रंथ
है जिस पर कि हम सब गर्व करते हैं। बाईं
ओर बैठे हुए मेरे भाई तो रामायण में पटु
हैं। मुझे इस अवसर पर रामायण की कुछ
पंक्तियां याद आ रही हैं। जब श्री राम-
चन्द्र को बनवास हुआ तो सीता जी उनके
साथ बन में जाने के लिए खड़ी हो गयी और
रामचन्द्र जी से आग्रह करने लगीं कि मैं भी
आप के साथ बन में जाऊँगी, तब रामचन्द्र जी
सीता जी को समझाते हुए कहते हैं कि तुम यह
सुकुमार शरीर लेकर कैसे बन में चल
सकोगी और वहां की कठिनाइयों को झेल
सकोगी और उनको बन गमन से रोकना
चाहते हैं। उस समय सीता जी जो उत्तर
में कहती हैं वह समझने की बात है। वह
आदर्श सदा हमारे देशवासियों की आँखों के
सामने रहना चाहिये। सीता जी कहती हैं :
“नाथ सकल सुख साथ तुम्हारे । सरद
बिमल विष्णु बदन निहारे ॥” रामचन्द्र जी
से सीता जी कह रही हैं कि हे नाथ आपके
साथ रह कर आपका शरद् पूर्णिमा के
निर्मल चन्द्रमा के समान मुख देखने से मुझे

[श्री टंडन]

समस्त सुख प्राप्त होंगे। रामचन्द्र जी यह कहते हैं कि तुम उस विहड़ रास्ते पर नहीं चल सकोगी तो सीता जी उसके उत्तर में इस तरह कहती हैं :

मोहि मग चलत न होइहि हारी ।

छिनु छिनु चरन सरोज निहारी ॥

क्षण क्षण में आपके चरण कमलों को देखते रहने से मुझे मार्ग चलने में थकावट न होगी। छिनु छिनु चरन सरोज निहारी। मैं पीछे पीछे चलूंगी, आपके चरण मेरे सामने होंगे और मुझ को थकावट नहीं आयेंगी। फिर सीता जी कहती हैं :

प्राणनाथ कल्यायतन

सुन्दर सुखद सुजान ।

तुम्ह बिनु रघुकुल कुमुद विषु

सुरपुर नरक समान ॥

प्राणनाथ अर्थात् आप मेरे प्राण के मालिक हैं। 'प्राणनाथ' हमारे यहां पति को संबोधन करने का प्रिय शब्द है। सीता जी कहती हैं कि हे प्राणनाथ, हे दया के धाम, हे सुन्दर, हे सुखों के देने वाले, हे रघुकुल रूपी कुमुद के खिलाने वाले चन्द्रमा, आपके बिना स्वर्ग भी मेरे लिए नरक के समान है। हमारी स्त्री जाति का यह आदर्श रहा है।

श्रीमती शिवराजवती नेहरू (जिला लखनऊ मध्य) : रामचन्द्र जी ने सती सीता जी के साथ क्या बर्ताव किया?

श्री टंडन : उन के साथ जो बर्ताव हुआ क्या बहन जी को उस की शिकायत है ? लेकिन मैं साधारण रीति से जो स्थिति है उसकी बात कह रहा हूँ जैसा मेरी बहन श्रीमती रेणु चक्रवर्ती ने बताया अपवाद होते हैं। लेकिन जो आदर्श हैं उन आदर्शों को समाज से नहीं छोड़ा जाता। उन आदर्शों को रक्खो। हां अपवादों का

इलाज करो। इलाज है। आप का स्पेशल मैरेज ऐक्ट बना हुआ है, अगर उस में कोई कमी है तो उस को पूरा करो। मगर यह जो हमारा पातिव्रत्य है, उस को न छुओ। जो स्पेशल मैरेज ऐक्ट है उस में आप अपने विवाह की रजिस्ट्री करा सकते हैं, अगर रजिस्ट्री कराने में कोई बाधा है तो उस को दूर कीजिये। मैं श्री पाटस्कर जी से कहता हूँ कि वह हिन्दू समाज के पातिव्रत्य के आदर्श की पवित्रता को न मिटावें। पातिव्रत्य की पवित्रता को रक्खें, विवाह की पवित्रता को न छुएं। परन्तु साथ ही जो आवश्यकता हो उस को पूरी करें। क्या मैं जानता नहीं कि हमारे देश में भी ऐसे स्त्री और पुरुष हैं जो कि अलग हो जाते हैं, लेकिन उनक लिये कोई दूसरा रास्ता बना दीजिये। विवाह का जो क्रम है उस को न छुयें। विवाह में हमारे यहां सप्त पदी होती है। विवाह में हमारे यहां स्त्री पुरुष का संवाद होता है। हमारे यहां जो विवाह संस्कार की पद्धति है, उस में ६।१० स्त्री और पुरुष का एक दूसरे से संवाद है, आपस में उन की बातचीत होती है। जो विवाह इस पवित्रता के साथ होते हैं, यदि उन में कोई अपवाद हो, कोई गड़बड़ी हो, किसी कारण से, तो उस के लिये रास्ता निकालिये परन्तु विवाह की पवित्रता के ऊपर आप हमला न कीजिये। आज आप एक स्मृति बना रहे हैं, मैं इस विषयक को स्मृति ही मानता हूँ। और मैं मानता हूँ कि हमें स्मृति बनाने का अधिकार भी है।

श्रीधुलेकर : स्मृति नहीं बना रहे हैं।

श्री टंडन : यह जो विधियां हैं सब स्मृतियां ही हैं। मैं उन को स्मृतियां ही मानता हूँ। पहले स्मृति बनाने का अधिकार ऋषियों को था अब वह अधिकार जनता को और जनता के चतिनिधियों को है। परन्तु मेरा निवेदन यह है कि आप जिस पवित्र कार्य में लगे हैं दायित्व के कार्य में लगे हैं, इस में भूल न कीजिये

आप की स्मृतियां जो आज बन रही हैं वह अशुद्ध नहीं। यह कहने को न हो कि हम इतने लोगों ने बैठ कर एक घृणित बात की। आप की बात समाज की पद्धति के विल्कुल विरुद्ध है, हमारे मौलिक सिद्धान्तों के विरुद्ध है। हमारे देश के सिद्धान्त ही दूसरों से अलग हैं, हमारे देश का क्रम ही दूसरा है, यह वह देश है जहां पर माना गया है :

“सुखस्य मूलं धर्मः”

सुख का मूल जहां धर्म है, इन भौतिक उपकरणों में नहीं। इस का यह अर्थ नहीं है कि भौतिक उपकरणों को सर्वथा छोड़ दिया जाय, लेकिन यहां यह रक्खा गया कि सुख का मूल धर्म है। इसी तरह से यह रक्खा गया :

“शासनस्य मूलं इन्द्रियनिग्रहः”

शासन का मूल इन्द्रिय निग्रह है। आज आप इस प्रकार की बातें कर के यह विषाक्त भावना फैलाते हैं कि पति पत्नी का सम्बन्ध छूट सकता है, इसकी बात आप न करें। यह एक ऐसा सम्बन्ध है जिसे हम पवित्र मानते हैं। मैं आदर्शों की बात कर रहा हूँ और कहता हूँ कि इस की पवित्रता पर बल दिया जाय, स्त्रियों और पुरुषों के अन्दर इस सम्बन्ध की पवित्रता की भावना हो। आप ने मानोगमी एक पत्नी विवाह की धारा स्वीकार की जिसके माने हैं एकपत्नीव्रत। एक पत्नीव्रत हमारा पुराना आदर्श है, रामचन्द्र की प्रसिद्धि ही इसके कारण हुई। बहुत से लोग एक पत्नीव्रत के आदर्श से गिर गये हैं। आज आप एक नई स्मृति बना रहे हैं और उसमें एक पत्नीव्रत का ऊँचा आदर्श रख रहे हैं तो यह विवाह विच्छेद डाइवोर्स की बात कैसे? पत्नीव्रत और पातिव्रत्य इन दोनों का जो मेल है उस में विच्छेद न लाइए। जो स्त्री पुरुष इस प्रकार से डाइवोर्स ले कर के अपना मुँह काला करना चाहते हैं वह दूसरी तरफ़ जायें दूसरे अधिनियमों का सहारा लें। विवाह

की पवित्रता को इस आज की स्मृति के द्वारा कैसे बढ़ाया जाय, आप को यह सोचना उचित है।

यह केवल मेरे और आप के बीच की बात नहीं है आप इस जगह से निकल कर बाहर तो चलिए और देखिये कि कितने आदमी आप को इसके पक्षपाती मिलते हैं।

संचार मंत्री (श्री जगजीवन राम) :

समाज कितने आदमियों से बनता है? समाज दो चार आदमियों को कहा जाता है या सारे समाज को समाज कहा जाता है? हिन्दू समाज के प्रायः ८० प्रतिशत लोग आज भी सिद्धांत रूप से डाइवोर्स को मानते हैं।

श्री टंडन : दो चार आदमी नहीं, मैं दो चार जाति भी नहीं कहता, मैं समाज की बात कह रहा हूँ। समाज में फैली हुई क्या प्रथा है कुछ जातियां हैं जहां, पति पत्नी के अलग हो जाने की प्रथा चलती है, लेकिन वहां भी सें अच्छा नहीं समझते। मैं तो कहता हूँ कि हरिजनों में भी बार बार विवाह कर अपने पति को जो पत्नी छोड़ती है उस को वह लोग अच्छा नहीं समझते।

श्री जगजीवन राम : क्या यहां बार बार छोड़ने की बात कही गई है?

श्री टंडन : यह कह ही कौन सकता है? आप कहेंगे तो आप को कौन बुद्धिमान समझेंगे? आप को अधिकार भी नहीं है ऐसा कहने का।

एक माननीय सदस्य : क्या आप इसू को अच्छा समझते हैं?

श्री टंडन : प्रश्न है आदर्श का। आप आदर्श नहीं रखते हैं तो न रखें। परन्तु क्या आप एक पवित्र स्त्री से कह सकते हैं कि तू चल और चांडालिनी हो जा, तू स्वैरिणी हो जा।

Shrimati Renu Chakravarti: What is all this? This is very objectionable.

श्री बी० बी० देशपांडे : कोई भावजेकशने-बुल बात नहीं है ।

श्री टंडन : मैं आप से कहता हूँ कि अगर आप चाहें तो यहां कानून बना सकते हैं ।

Mr. Deputy-Speaker: The hon. Member will kindly look at me and address the Chair.

श्री टंडन : मैं आप से कहता हूँ, जब उधर से कुछ साहबान बोलते हैं जो मुझे थोड़ा सा उधर भी झुकना पड़ता है ।

मैं आप से कहता हूँ कि यह दलील कि क्या हम लोगों से कह रहे हैं कि डाइवोर्स करो, बिल्कुल व्यर्थ है । मैं कहना चाहता हूँ कि हम यहां एक आदर्श रखते हैं । हमारे देश में पुराने आदर्श के एक राजा ने कहा था :

“न स्वैरी स्वैरिणी कुतः”

हमारे राज्य में कोई स्वैरी नहीं है, हमारे राज्य में कोई भी व्यभिचारिणी नहीं है । हमारा वास्तविक आदर्श यह है । डाइवोर्स वहां होता है जहां व्यभिचारी और व्यभिचारिणियां हों । हां कभी कभी बहुत थोड़े मामलों में आपसी लड़ाई भी हो जाती है । वह तो दूसरी बात है । मैं कहना चाहता हूँ कि हमें उंचे आदर्श रखने हैं । कहीं कहीं ऐसा भी होता है, जैसा कि हमारी बहनों ने कहा, ऐबेरनेसहॉ, अपवाद हों । उस के लिये मैं रास्ता बता रहा हूँ । उस का रास्ता यह है, जैसा कि हमारे हिन्दू ला के एक विशेषज्ञ ने बताया, कि उसके लिये स्पेंसल मैरज ऐक्ट में मार्ग निकाल दिया जाय ।

मैं आप से यही निवेदन करना चाहता हूँ, कि मेरा किसी के प्रति आक्षेप नहीं है, हमारे एक मंत्री जी बोल उठे, उन के प्रति भी मेरा आक्षेप नहीं है, न हरिजनों की ओर ही सिर्फ संकेत कर के मैं कह रहा हूँ ।

श्री जगजीवन राम : आप भूलते हैं, हिन्दू समाज में भी बहुत सी जातियां ऐसी हैं जिन के अन्दर डाइवोर्स सिद्धान्त रूप में प्रचलित है । सिर्फ हरिजनों की बात कहना गलत है ।

श्री टंडन : मैं तो खुद कहता हूँ कि गलत है । हरिजनों का कोई प्रश्न नहीं है ।

श्री जगजीवन राम : आप ने नाम लिया, और किसी ने नहीं लिया ।

श्री टंडन : आप बोलने के लिये खड़े हुए कि हरिजनों

श्री जगजीवन राम : मैं यह कहने के लिए खड़ा हुआ कि हमें पूरा मुल्क देखना है, मैं ने हरिजनों के बारे में नहीं कहा । मैं ने तो हरिजनों का नाम भी नहीं लिया । मैं तो सारे हिन्दू समाज के लिये बोल रहा हूँ ।

श्री टंडन : और मैं भी बोल सकता हूँ सब के लिये

Mr. Deputy-Speaker: I would request hon. Members to get up if they want to make an interruption, and make it with the permission of the Chair. Otherwise, they may reserve their remarks at the end and ask some questions.

श्री टंडन : यह अच्छा होगा कि हमारा मंत्री जी जब उन के बोलने का समय आये तब अपनी बात कहें और तब तक वह चुप रहें ।

जहां तक समाज का सम्बन्ध है, उस में हरिजन भी हैं, उस में पिछड़ी जातियां भी हैं । मैं इस बात को मानता हूँ कि जो माननीय मंत्री ने यह कहा कि इस में केवल हरिजनों की बात नहीं है । वह ठीक है । बहुत से ऐसे लोग हैं जो कि शेड्यूल्ड कास्ट्स के नहीं हैं लेकिन उन के यहां भी पति और पत्नी अलग हो जाते हैं । जो एक वास्तविक बात है उस को कोई थोड़े ही छिपा सकता है, परन्तु मैं फिर कहता हूँ कि हरिजनों के यहां भी यह बीज अच्छी नहीं समझी जाती है । मैं कहता हूँ कि आप देश में अच्छी आदर्शवादिता रखें ।

डाइवोर्स की बात हम यहां न लावें। जो लोग गलत किस्म के आदमी हैं, या गलत किस्म की स्त्रियां हैं, मैं उन की बात नहीं कहता। मैं उन लोगों की बात नहीं कहता जिन लोगों ने पातिव्रत्य धर्म को या एक पत्नीव्रत धर्म को जीवन में स्थान नहीं दिया। ऐसी बात जहां पर आती है, वहां पर हम उस के लिये रास्ता निकाल दें।

परन्तु यह जो हमारे देश का आदर्श है, वह आदर्श केवल उच्च जातियों का नहीं है वह सब का है—हरिजनों का भी है। हमारे सन्तों का वही आदर्श रहा है। आप रैदास की वाणी पढ़िए, पातिव्रत्य धर्म के विषय में उनके विचार पढ़िए। मैं ने अभी जो दोहा पढ़ा है वह कबीर का है, जो जुलाहे थे। हमारे देश के जो उच्च विचारक और महात्मागण हुए हैं, उन सब का यह आदर्श रहा है कि पति-पत्नी का जो सम्बन्ध है, वह अत्यन्त पवित्र है। यह कोई उच्च जातियों का प्रश्न नहीं है।

इसी नाते पाटस्कर साहब से मेरा निवेदन है कि वह इस बारे में कोई रास्ता निकालें और इस धारा को हटा दें। इसमें जल्दी की कोई बात नहीं है। वह इस पर पुनः विचार करें और कोई रास्ता निकालें। कुछ और समय ल लें, कुछ बिगड़ नहीं जायगा, और फिर वह ठीक रास्ते पर उचित अधिनियम लायें।

Shrimati Sushama Sen (Bhagalpur South): In supporting the Bill I think that with changing times we have to consider whether the time has come or not to change the Hindu law. For the last thirty years, this question has been discussed in many forms and shapes and now it has come to a stage when it has been adapted to the present conditions. In the Indian constitution we have given equal rights for men and women and as such, there is no one who would say that women should not have an equal status with men. If a man can desert his wife, is it not right that the woman may have the same facility and the same conditions as her husband? Now that

the Bill is before us, I am sure that even Shri N. C. Chatterjee, with his eloquent speech and his support for not having a divorce clause, would tell us if there had not been very many hard cases which had come to his personal knowledge, when a Hindu wife has no other way for any relief. In such cases, Shri N. C. Chatterjee himself would have been the first person to see that she gets the relief under the law.

Regarding divorce I agree in a minute of dissent, in which Shri Sham Sunder Narain says:

"When we are introducing the system of divorce in the Hindu society the most essential grounds, according to me upon which a decree should be granted are:

- (a) cruelty; or
- (b) desertion for a continuous period of more than one year; or
- (c) adulterous conduct of either party after marriage....

Cases of great hardship are not wanting where the husband or the wife on account of one, or the other, of the grounds suggested above has made the life of the other partner miserable and in these cases I consider immediate relief to the innocent party by a dissolution of his or her marriage is absolutely necessary and to disentitle him or her from obtaining a decree of divorce seems most unfair."

So, I was just saying that divorce is being first introduced in the Hindu law and I do not think that all these conditions which have been laid down should be there. For instance I do not agree that illness or disease should be a cause for divorce as in sub-clauses (iii), (iv) and (v) in clause 13. In no kind of illness should there be a divorce because a Hindu wife is known for her (An Hon. Member: Purity) self sacrifice and for her patience and she would suffer any inconvenience in order to mitigate the sufferings of others. It is not fair to lay down such conditions. If the

[Shrimati Sushama Sen]

husband is suffering from any incurable disease, I do not think that it should be a ground for divorce or *vice versa*. I think for the first time when divorce is being introduced in the Hindu law, we could have only those conditions which were there in the original Indian Divorce Act. That would suffice for the present and then other things can be put in later. In the Special Marriage Act also when it was introduced in 1872 there was very great opposition especially for divorce and Shri Keshav Chandra Sen, at whose instance the Special Marriage Act came into being—he himself said that “marriage is indissoluble.” Even now in the Brahmo Samaj we regard it so. The women had adhered to this principle, they will never take a divorce unless they are forced to do so. I do not think there is any cause for such a great fear or apprehension that as soon as the divorce clause is passed every woman would run to court to take a divorce. The Indian women are most attached to the family and the home and they would never go in for a divorce. I would appeal to all the hon. Members who take exception to divorce not to be so afraid of this clause and to pass it in a way that is desirable.

श्री राधा रमण (दिल्ली नगर) :
मेरा यह बिल्कुल विचार नहीं था कि मैं इस सम्बन्ध में बोलूँ, लेकिन दो रोज़ से जो वह इस सिलसिले में चल रही है और जो विचार यहाँ पर रखे गये हैं, उन्होंने मुझे बाध्य कर दिया है कि मैं भी अपने कुछ विचार सदन के सामने रखूँ। जहाँ तक डाइवोर्स का सम्बन्ध है, यहाँ पर जितने विचार प्रकट किये गये हैं, उन में दो तीन बातें नज़र आती हैं। कुछ सदस्यों ने इस बात पर आपत्ति की है कि हमारे समाज की जो बहुत पुरानी प्रथा है और उसके सामने जो आदर्श है, उसको किसी तरह छेड़ उलट पलट नहीं करना चाहिये। मैं

स्वयं इस विचार को मानने वाला हूँ और मैं समझता हूँ कि भारतवर्ष में हम एक ऐसा समाज देखते हैं, जो इतने ऊँचे आदर्शों पर चलता है या अमल करता है, जो कि संसार में कहीं देखने को नहीं मिलते हैं। लेकिन जैसा कि अभी हमारे माननीय टंडन जी ने कहा है, जहाँ तक और बुद्धि पर कोई चीज़ न उतरती हो और वह समय के अनुसार न लागू हो सकती हो, उसे बदलने की आवश्यकता पड़ती है। उन्होंने इस बात को मानते हुये यह दलील दी है कि डाइवोर्स के सम्बन्ध में अभी हम ने जो स्पेशल मैरिज एक्ट पास किया है, अगर हम उस पर ही संतोष कर लें, तो वह ज्यादा अच्छा होगा। मैं इस बात को नहीं समझ सका हूँ कि जो व्यक्ति आज अपनी शादी करता है, वह कैसे इस बात को जान सकता है कि किसी समय मेरे सामने कोई ऐसा मौका आयगा कि मेरी और मेरी पत्नी की आपस में नहीं बन सकेगी और चूँकि नहीं बन सकेगी, इस लिये वह अभी अपना विवाह स्पेशल मैरिज एक्ट के मुताबिक रजिस्टर्ड करा ले।

श्री नन्द लाल शर्मा : वह किसी समय भी रजिस्टर करा सकता है।

श्री राधा रमण : जो जन-साधारण इस देश में बसते हैं, उन सब को यह ब्याल होना बड़ा मुश्किल है। जितनी जनता या समाज हमारे सामने है, उस सब को यह अधिकार मिलना चाहिये। आज एक ऐसा समय आ गया है, आज परिस्थितियाँ ऐसी हैं, जब कि हम देखते हैं कि हमारे शहरों में खास तौर पर और गांवों में भी विवाहित स्त्रियाँ घरों में बैठी रहती हैं और उन के साथ जो व्यवहार होता है, वह इतना अत्याचारपूर्ण होता है, कि हमें

1 P.M.

इसके अलावा कोई दूसरा रास्ता नजर नहीं आता कि हम ऐसे आपत्ति के काल में उनको इस बात की इजाजत दें कि वे डाइवोर्स हासिल कर सकें । मैं जानता हूँ कि यह एक ऐसा कदम है जो कि समय के अनुकूल है । मेरा विश्वास है कि समय को देखते हुये अगर आज हमने इसे कबूल न किया तो इस से समाज को कहीं ज्यादा हानि होगी और कहीं ज्यादा अन्याय हम समाज के साथ और विशेष कर स्त्रियों के साथ करेंगे । बहुत सारे भाई जो डाइवोर्स के खिलाफ बोलते हैं कहते हैं कि यह हमारे शास्त्रों के अनुसार नहीं है । पतिव्रत धर्म के हमारे आदर्शों के अनुसार नहीं है । इसे स्वीकार करने से स्त्रियों का पतिव्रत धर्म खराब हो जायेगा, वे धर्म का पालन नहीं करेंगी । मेरी समझ में यह बात नहीं आती कि इस कानून के पास होने के बाद वे कौन से पुरुष होंगे या कौन सी स्त्रियाँ होंगी जो अपने धर्म का पालन करना चाहेंगी उन्हें इस कानून की शरण लेने के लिये बाध्य किया जायेगा । इसका फायदा पुरुष या स्त्री तभी उठा सकेंगे जब उन में से एक यह देखेगा कि उन का आपस में निर्वाह किसी भी तरह से नहीं हो सकता । क्लाइज १३ और १४ को पढ़ने के पश्चात् हर एक व्यक्ति को यह बात समझ में आनी चाहिये कि इन दो धाराओं में डाइवोर्स की शर्तों को काफी सख्त बना दिया गया है और साधारणतया हर व्यक्ति इस कानून को प्रयोग में लाने से पहले हजार बार सोचेगा और तब कहीं मजबूरी के दरजे फैसला करेगा । हर एक व्यक्ति इसकी तरफ झुकेगा, ऐसा मैं नहीं समझता । मेरे विचार में जो व्यक्ति जीवन की पवित्रता में विश्वास रखते हैं और आदर्शवादी हैं, जो बड़े पुराने शास्त्रों के मुताबिक चलना चाहते हैं, उन के रास्ते में यह कानून कोई विघ्न नहीं डालता ।

आज सैकड़ों ऐसे कानून हैं जिन कानूनों का प्रयोग किया जा सकता है लेकिन समाज में एक ऐसी भावना है, एक ऐसी प्रवृत्ति है कि जहाँ तक हो सके उनका सहारा लिये बिना नेक काम किया जाये । ऐसे सत्पुरुषों को कोई चीज इस बात की प्रेरणा नहीं देती कि वे अदालतों का दरवाजा खटखटायें, हालांकि उन के लिये कानून मौजूद हैं और वे उन से फायदा उठा सकते हैं । जब तक समाज में आदर्शवादी सिद्धांतों का पालन करने की भावना मौजूद है तब तक ऐसे कानून रहते हुये भी उनका उपयोग सिर्फ मजबूरी में ही किया जा सकता है । दुरुपयोग का तो कहना ही क्या ? कोई भी व्यक्ति मजबूर हो कर और जब उसे और कोई रास्ता नजर नहीं आयेगा इस से फायदा उठायेगा । इस लिये मैं समझता हूँ कि आज यह नेसेसरी इविल के तौर पर कबूल हो रहा है । आज हम ऐसा करने पर मजबूर हो रहे हैं । यदि आज हम परिस्थितियों को देखें तो हम इसी नतीजे पर पहुँचेंगे कि इस कानून को रखने के इलावा और कोई चारा नहीं है । अगर आज हमने इस को न माना तो इस का नतीजा यह होगा कि सैकड़ों की तादाद में शहरों और गांवों में जो ऐसी स्त्रियाँ हैं कि जो अपने पतियों के साथ नहीं रह रही हैं और अपने पिता के पास या अपने भाई के पास रहती हैं और तरह तरह के अत्याचार सहती हैं वह अधिक दुःखी होती जायेंगी । आज वे मजबूर हो कर एक ऐसा जीवन बिताने लग जाती हैं जिसे हम किसी भी हालत में मुनासिब नहीं कह सकते और जिस के अन्दर हजारों आफतें उन को उठानी पड़ती हैं । मेरी समझ में यह नहीं आता कि इस किस्म की स्त्रियाँ यदि इस कानून से फायदा उठाना चाहें तो हम उन के रास्ते में क्यों रुकावट डालें । आज पतिव्रत के नाम पर, भारतीय संस्कृति

[श्री राधा रमण]

के नाम पर, धर्म के नाम पर बहुत सी बातें कही जाती हैं। मैं मानता हूँ कि यह सब ठीक हो सकती है। मगर यह बिल्कुल समझ में नहीं आता कि इस कानून को रखने से हर एक स्त्री या हर पुरुष यह कैसे सोचने लगेगा कि जरा जरा से झगड़े पर वह इस कानून का सहारा लेना पसन्द करेगा। सिलैक्ट कमेटी ने इस कानून में जो बंधन लगा दिये हैं उन बन्धनों को देखते हुये, मेरे विचार में इस तरह का भय किसी के दिल में हो, यह ठीक नहीं है। अगर स्त्री और पुरुष पवित्र जीवन बिताना चाहते हैं तो यह विधेयक उन के रास्ते में रुकावट नहीं है। यह तो सिर्फ उन के लिये है जो यह समझते हैं कि उन का आपस में निर्वाह होना मुश्किल है और इसके सिवा अन्य चारा नहीं।

अभी यहां चर्चा हुई और कुछ वहस भी हुई कि देश में डाइवोर्स की प्रथा हीं अमल में नहीं आ रही है। हम देश में देखते हैं कि अनेक स्थानों पर यह प्रथा मौजूद है तिस पर भी वहां पतिव्रता स्त्रियों की कमी नहीं है। अब इस विधेयक के बारे में यह कहना कि इस से पतिव्रत धर्म नष्ट हो जायेगा सर्वथा अनुचित है। जिन लोगों का जेहन आदशों के पीछे चलता है अथवा ज अपने जीवन को नेक और ऊंचा रखना चाहते हैं, उन के लिये यह कानून कोई रुकावट नहीं डालता, उनका रास्ता बिल्कुल साफ है। लेकिन जो उतने ऊंचे आदशों पर न चलने में विवश हैं, जो बेईमान हैं, जो बदनियत हैं, उन से छुटकारा पाने के लिये यह कानून बनाया जा रहा है। यह कानून समाज में सुधार लाने के लिये, समाज में पवित्रता लाने के लिये, समाज में स्वच्छता लाने के लिये बनाया जा रहा है। इस लिये मेरी

आप को यह राय है कि यह मानते हुये कि आज हम ऐसे नियम बना रहे हैं कि जो हमारे पुराने आदशों के अनुकूल नहीं है, हम परिस्थितियों के कारण मजबूर हो गये हैं कि ऐसे नियम बनायें। आज समय की यह मांग है कि अगर हम समाज को अच्छा बनाना चाहते हैं, अगर हम समाज को प्रगति की तरफ ले जाना चाहते हैं, तो ऐसे कानून का होना परम आवश्यक है। इस बात को हमें सोचना चाहिये और हमें मानना चाहिये।

इन शब्दों के साथ मैं यह महसूस करता हूँ कि इस विधेयक के अन्दर जो डाइवोर्स की शर्तें हैं उनका संसद् के सदस्यों को पूरा समर्थन करना चाहिये।

Shri Kelappan: I have given notice of amendment to add one more clause for the dissolution of marriage. The amendment is this:

In page 8, after line 41, add:

“(3) The husband and the wife may also jointly present a petition for the dissolution of their marriage by decree of divorce on the ground that they have mutually agreed to dissolve their marriage.”

I may be misunderstood. I am not for dissolution of marriage. I am not for divorce on any ground whatsoever.

Shri Pataskar: What is the number of the amendment?

Shri Kelappan: No. 164.

An. Hon. Member: You have no such problem.

Mr. Deputy-Speaker: The amendment is that if parties agree, no reason need be asked.

Shri Kelappan: Divorce is really against the Hindu conception of marriage. Marriage, according to Hindu Shastras, is a spiritual union

governed by the highest principles of morality and ethics.

Shri Velayudhan (Quilon cum Mavelikkara—Reserved—Sch. Castes): Can those who have not married speak like this?

Shri Kelappan: That does not apply to me. We consider that the *grahasthashrama*, qualifies the persons for the highest service of humanity. Dharma Shastras plan not only the life of society, but the life of the individual also. First of all, a man is a *brahmachari* devoting his whole time for study. This may not be true perhaps in the case of the present day students. It may be as Justice Lindsay described:

"But my Hindu Mahasabha friends will do well to remember that it is so not only in America, but in the present day India also."

To return to the point, a *brahmachari* becomes a *grahastha*, a family man. He marries, begets children and brings them up as true citizens of the country. Then, the partners give up the worldly life and devote themselves wholly to the service of humanity. If people enter into marriage with some such lofty ideal, no occasion will arise for its dissolution. This is viewing marriage from a high point of view.

Taking a more practical view of the matter, divorce is not allowed. Both parties know that there is no escape from the marriage tie. So, they adjust themselves to each other and lead a peaceful and mutually helpful life. Where divorce is allowed, what do we find? A woman due to frequent child bearing, contracts some disease or loses her charm and becomes positively ugly. The husband who cares only perhaps for carnal enjoyment and takes a sensual view of marriage, wants to get rid of her and marry a younger and a more graceful woman. He finds some excuse or other. A respectable woman will prefer divorce to defending any charge of adultery in a court of law.

There is the other side of the picture also. In the western countries, such

women are known as alimony sharks. These are the modern ultra radical women who have got all their beautifying devices and who are out to blackmail and trap rich men. It is in the ball rooms and bars of hotels that they spread their nets and catch their unwary victims. They marry with a view to divorce and earn alimony. Here, we have increased that evil by providing that a husband also may ask for alimony; not only the wife. This picture may be a little overdrawn. But, such cases do exist. These women pride themselves over the number of men that they have trapped. These things cannot but happen when you take a low view of marriage and drag it down from the high moral plane. A person with character will never give up a partner after years of mutual service and common life, simply because he or she has become unsound in mind, or a leper or a cripple or impotent. They will find in it an opportunity for selfless service and not an excuse for divorce. That kind of service not only ennoble one's own character, but it also raises the moral sense of society.

Here is a clash between the spiritual and materialistic conception of marriage. The question is which shall we choose? When this Bill was first introduced, I think it was the Member from Poona who said that marriage was only a civil contractual relationship. If it is so, marriage may take several forms. It may be a companionate marriage; it may be a trial marriage or it may be for a period. Or as some hon. Members have suggested, it may even be a partnership concern. Monsieur Blum, at one time President of the French Republic, in a sensual book of his, said that marriage between people with previous sensual experience is more lasting. Perhaps that also may be tried to minimise divorce.

Mr. Deputy-Speaker: That means that they have married others and divorced willingly or unwillingly.

Shri Kelappan: The previous sensual experience might not have been married life.

Shri Sarangadhar Das (Dhenkanal—West Cuttack): He means companionate marriages.

Pandit Thakur Das Bhargava: Has the hon. Member moved any amendment in this regard?

Shri Kelappan: I am coming to my amendment. I do not consider leprosy or insanity as reasons for divorce. An hon. friend said that there are degrees of lunacy. There are other philosophers who hold that the whole world is a lunatic asylum and we are all lunatics.

An Hon. Member: Do you hold that view?

Shri Kelappan: Of course, he makes a distinction in the case of some people who will not be considered as lunatics. These are the people who analyse their own illusions. They are considered to be philosophers. Therefore, you can divide the whole world into lunatics and philosophers.

Shri S. S. More: To which of the two categories do Members of Parliament belong?

Mr. Deputy-Speaker: Members of Parliament are always exceptions.

Shri Kelappan: They may be considered to be philosophers.

I concede that the husband and wife may find it almost so difficult to get on together. If it is so, then, by their mutual consent, they may be allowed to part. That is the only thing that I can conceive of. The reasons given are certainly not reasons for divorce. I commend this amendment. All the others may be scrapped.

श्री जी० एच० देशपांडे (नासिक मध्य)

इस विधेयक में विवाह विच्छेद के लिये जो व्यवस्था की गई है, मैं उसका समर्थन करने के लिये खड़ा हुआ हूँ।

मेरे महासभा और रामराज्य परिषद् के दोस्तों ने बहुत कुछ इस पर

कहा है, बार बार इस विधेयक के इन प्रविष्टियों के खिलाफ वे बोले हैं, और मैं ने उन सब बातों को सुना है। उन के अलावा श्रद्धेय टंडन जी भी इस विषय पर बोले हैं। मेरे दिल में उन के प्रति बहुत आदर और श्रद्धा का भाव है लेकिन मैं यह कहना चाहता हूँ कि जब उनका वक्तव्य आज मैंने सुना तो मुझे बहुत धक्का लगा : हिन्दू समाज के सामने जो बड़े बड़े आदर्श हैं और रहते आये हैं, उन से मैं बहुत अच्छी तरह परिचित हूँ और बचपने से उनको जानता हूँ, लेकिन जब समाज की तरफ आँखें उठाता हूँ तो बिल्कुल दूसरी ही हालत पाता हूँ। मैं आपको बता लाऊँ कि बचपन में मेरे पड़ोस में एक बड़े शास्त्री महाराज रहते थे, उन के लिये मेरे शहर और जिले में बड़ा आदर का भाव था और वह मेरे पिता जी के पास आते जाते थे और हमेशा हिन्दू धर्म की बातें किया करते थे और कहते थे कि हिन्दू धर्म कितनी आदर्श चीज है और वे उन समाज सुधारकों को बुरा कहते थे जो सती प्रथा को हटाने के लिये प्रयत्नशील थे, उनका विचार था कि ऐसा करके वह सती की महिमा को ही खत्म कर रहे हैं। सती का आदर्श कितना महान् और उच्च है। एक दफा विवाह हो जाने पर स्त्री और पुरुष एक पवित्र वैवाहिक बंधन में हमेशा हमेशा के लिये बंध जाते हैं, पति, पत्नी एक रूप हो जाते हैं और कुछ भी हो उस विवाह बंधन को तोड़ना नहीं चाहिये।

ऐसा हुआ कि एक गांव में एक शास्त्री जी की पत्नी मर गई। मैं पड़ोस में रहता था इसलिये मैं भी शमशान भूमि में चला गया। मैंने शास्त्री जी की आँखों में आंसू भी नहीं देखा। उन के मित्र मेरे सामने

भूमि पर बैठे थे। शास्त्री जी की पत्नी की चिता जलती थी और उन के दोस्त कह रहे थे कि अड़ोस-पड़ोस में कोई १४-१५ वर्ष की लड़की है जिस के साथ १५ दिन के भीतर शास्त्री जी की शादी कर दी जाये ? बड़े आदमी हैं, उन्हें विवाह करना ही चाहिये। उन के सामने कितना भ्रष्टा भवसर था ? शादी होना बड़ा भ्रष्टा है, लेकिन एक आदमी की पत्नी मर जाती है, उस की चिता जल रही है और उस के दोस्त कहते हैं कि क्या अड़ोस-पड़ोस में कोई लड़की है १५-२० साल की जिस के साथ १५ दिन के भीतर उस का विवाह कर दिया जाये ? उन लोगों के लिये धर्म या पवित्रता की कोई बात नहीं है, वह तो बड़े धर्मवादी हैं। जब कोई स्त्री कहती है कि यह क्या बात है कि मैं सती हो जाऊं ? तो उस के लिये कहते हैं कि यह तो आदर्श की बात है। पुरुषों के लिये अलग आदर्श है और स्त्रियों के लिये अलग आदर्श है। मैं नहीं चाहता कि पुरुष और स्त्री के लिये अलग अलग आदर्श हो। अब वह दिन नहीं रहे जब कि हमारी बहनें देवी हुआ करती थीं, जब कि वह शिक्षा नहीं लेती थीं, उन को शिक्षा देना बड़ा भ्रूतर्क समझा जाता था, वह स्कूलों में नहीं जाती थीं, उन की स्थिति जानवर सरीखी थी। आप तो चाहते हैं कि वह वही बनी रहें, उन को समझना ही नहीं चाहिये। लेकिन अब तो जमाना बदल गया वह स्कूलों में जाती हैं, पढ़ती हैं, अपने भविष्य की ओर ध्यान दे सकती हैं, यह समझ सकती हैं कि क्या भ्रष्टा है और क्या बुरा है, और जानती हैं कि वह भी इस देश की एक महत्वपूर्ण अंग हैं। जब पुरुष यहां आते हैं और कहते हैं कि हमारा यह आदर्श है, वह आदर्श है, तो स्त्री के मन में भी आता है कि आखिर यह आदर्श क्या है जो कि पुरुषों के लिये तो है, लेकिन हमारे लिये नहीं है।

जब यहां पुनर्विवाह की बात चलती थी तो यह होता था कि ५०-६० साल का आदमी जिस के ५-६ लड़के लड़कियां होती थीं, वह भी शादी कर सकता था, और वह जो उस की बड़ी लड़की की उम्र होती थी उस से कम उम्र की लड़की से शादी कर सकता था। अगर उस के घर में कोई बाल विधवा होती थी तो उस का विवाह नहीं हो सकता था। मैंने अपनी आंखों से देखा है और कानों से सुना है, मेरे ही पड़ोस में कोई ३० वर्ष पहले की बात है, जो घर का स्वामी था, कई बच्चों का पिता था, उस का पुनर्विवाह हो गया और उसकी जो बाल विधवा लड़की थी वह एक कोने में बैठी थी। अड़ोस-पड़ोस में रहने वाले जो धर्म मार्टंड थे वह कहने लगे कि आप के यहां शादी का मंगल कार्य होने में यह बाधा है कि जब तक आप की बाल विधवा लड़की के जो बाल हैं वह नहीं काटे जायेंगे तब तक हम इस धर्म विवाह में भाग नहीं लेंगे। कितना उच्च आदर्श है हिन्दू समाज का और कितनी पवित्रता भरी हुई है हिन्दू समाज में। स्त्री के लिये वहां कोई पवित्रता है ही नहीं और न स्त्री के लिये कोई संस्कार ही है। यह सब जब तक हिन्दू समाज में भरा हुआ है तब तक इस प्रकार से बोलना कि हमारे सामने बड़ा भारी आदर्श है, इस में मैं नहीं समझता कि कोई धर्म है। पुराने जमाने में क्या हुआ। उन लोगों ने क्यों ऐसी बातें रहीं, इस में मैं नहीं जाना चाहता लेकिन आज की बात क्या है ? आज स्त्रियां अनपढ़ नहीं हैं। आज स्त्रियां समझती हैं कि जो अधिकार पुरुष के हैं वही स्त्री के हैं। जब वह यहां की बातें सुनती हैं तो कहती हैं आखिर यह सब क्या है ? मानागैमी बड़ी भ्रष्टा-चीज है, लेकिन आप देखिये कि जब बहुत उम्र आदमी की हो जाती थी और

[श्री जी० एच० देशपांडे]

कोई पुत्र नहीं होता था तो पुत्र होने के लिये एक कायदा रखा गया कि ऐसा आदमी पुत्र के लिये दूसरी शादी कर सकता है। बड़े बड़े हिन्दू शास्त्रों में ऐसा लिखा हुआ है। तो जैसे एक पुरुष लड़का न होने पर दूसरी शादी कर सकता है उसी तरह एक स्त्री को भी क्यों नहीं हक होना चाहिये? मैं नहीं चाहता कि पुरुष दूसरी शादी इसलिये कर सके कि उस के लड़का हो। मर्द पर औरत की जिम्मेदारी भगवान ने डाली है, स्त्रियों को वैसे ही रहना चाहिये जैसा भगवान ने उन को कर दिया, उन को गुलाम ही रहना चाहिये, यह मैं नहीं समझ सकता। इस समाज में आज से १०० वर्ष पहले यह बातें ठीक हो सकती थीं, लेकिन आज अगर कोई आ कर यह बात कहे, तो मैं उस से पूछना चाहता हूँ कि यह कैसे समझ में आ सकता है। क्या आप चाहते हैं कि एक आदमी अगर अपनी स्त्री के साथ बुरा बर्ताव करता है, शराब पीता है और शाम को घर आ कर स्त्री को पीटने को उठता है, जो बच्चे उस ने पैदा किये हैं, उन की कोई जिम्मेदारी नहीं लेना चाहता है, तो भी उस की स्त्री उसी की गुलामी करती रहे? आखिर उस स्त्री को क्या करना चाहिये? वह पढ़ी लिखी है, वह चाहती है कि उस के ऊपर से उस आदमी का बोझ हट जाये, वह अपने बच्चों की अच्छी तरह से सम्भाल करे, तो क्या उस को इस का हक नहीं होना चाहिये? आखिर यह क्या धर्म है, क्या आदर्श है? अभी टंडन जी बोल रहे थे तो मुझे उन के शब्दों को सुन कर बड़ा दुःख हुआ। वह कहते हैं कि ऐसे आदर्शों को इस कानून में नहीं रखना चाहिये। कोई दूसरा कानून होना चाहिये इस के लिये। मैं आज पूछता हूँ कि जिस समाज में, जिन जातियों में यह

रिवाज हैं और आज तक चालू हैं जिन के यहां डाइवोर्स होता है, वह क्या इन्कीरियर हिन्दूज हैं?

श्री टेकचन्द (अम्बाला-शिमला)

नहीं, वह बहुत सुपीरियर हैं।

श्री जी० एच० देशपांडे : और वह हिन्दू जो कि आदर्श तो इतने बड़े बड़े रखते हैं, लेकिन जिन को जीवन में अमल में नहीं लाते हैं, वह बड़े पवित्र हैं? मेरी समझ में ही नहीं आता कि आखिर यह बात कैसी है।

श्री टंडन : उपाध्यक्ष महोदय, माननीय सदस्य ने मेरी बात को समझा नहीं, मैं ने तो इस तरह की कोई बात नहीं कही। मैं कोई दो विभाग चाहता हूँ हिन्दू समाज में ऐसी बात नहीं है। मैंने तो यह कहा था कि जो कानून पहले से ही बना हुआ है, उस में ऐसा रास्ता निकाल दीजिये जिस में विशेष दशा में विवाह विच्छेद सम्भव हो जाय। मैंने कोई ऐसी बात नहीं कही जैसी कि आप कह रहे हैं।

श्री जी० एच० देशपांडे : मैं ने जो सुना वह ऐसा ही सुना था कि जो ऐसा आदर्श नहीं रखते हैं उन के लिये यह रास्ता है कि अलग कानून हो जाये।

श्री टंडन : जो स्पेशल मैरेज ऐक्ट बना है, मैं ने उस के हवाले से कहा था कि ऐसे आदमियों के विवाह का प्रबन्ध उस ऐक्ट में कर दिया जाये। मैंने पाटस्कर जी को यह बात सुझाई थी जिस में कि विवाह की पवित्रता भी बनी रहे और जो व्यक्ति उस ऐक्ट में रजिस्ट्रेशन करा ले, चाहे वह हिन्दू हो या और कोई हो, उस का विवाह उस ऐक्ट के अन्दर माना जाये।

श्री जी० एच० देशपांडे : मैं तो समझता हूँ कि ऐसा करने से हिन्दू समाज के दो टुकड़े हो जाते हैं। एक डाइवोर्स न करने वाला और दूसरा डाइवोर्स करने वाला। अगर यह दो श्रेणियाँ बनाई गईं तो हिन्दू समाज में बगावत हो जायेगी। यह जीज मुझे किसी तरह से भी अच्छी नहीं लगती। मैं मानता हूँ कि यह आदर्श एक पत्नीव्रत का रहना चाहिये, डाइवोर्स का आदर्श समाज के सामने रखा जाय, ऐसा कोई नहीं कहता। मोनोगमी ठीक है, एक पत्नीव्रत अच्छी बात है, लेकिन कभी कभी ऐसा होता है कि कहा जाता है कि हमारे लिये थोड़ा सा कंसिडरेशन रखो, अगर कोई दिक्कत आ जाय तो दूसरी पत्नी के लिये कोई रास्ता रखो। वैसे यह ठीक है, मैं भी मानता हूँ कि विवाह हिन्दुओं की पवित्र चीज है। विवाह कोई ऐसी चीज नहीं है जैसे कि हम कपड़ा बदलते हैं। मैं ऐसा नहीं मानता कि इस प्रकार की खराब प्रणाली को चलाया जाये, लेकिन अगर कोई बुरा पति हो, कोई अपनी स्त्री के साथ बुरा बर्ताव करता हो, तो उस स्त्री को डाइवोर्स मिलना चाहिये। उन को ऐसी किसी भी आश्रय में सुला हक होना चाहिये। यदि किसी का पति ठीक से रहता है और पति और पत्नी ठीक तरह से रहते हैं तो उन का डाइवोर्स नहीं होना चाहिये, इस में कोई गलत बात नहीं है, इस से समाज की कोई बुराई होने वाली नहीं है, और हिन्दू समाज इस के खिलाफ होगा ऐसा मैं नहीं समझता। लेकिन डाइवोर्स से भी हिन्दू समाज की कोई बुराई होगी यह भी मानने वाली बात नहीं है। क्योंकि बम्बई सूबे में भी बहुत जगहों पर ऐसी हैं जहाँ यह रिवाज चालू है, लेकिन उस का कोई बुरा असर अब तक नहीं हुआ है। लेकिन आदिमियों के ऊपर इस का असर

अच्छा हुआ है, यह बात ठीक है। इस-लिये मैं बहुत जोर के साथ यह जो डाइवोर्स का प्राविजन है, उस का समर्थन करता हूँ।

श्री नन्दलाल शर्मा :

तद्विषयमव्ययं धाम सारस्वतमुपास्महे
यत्प्रसादात्प्रलीयन्ते मोहान्धतमसश्छटाः॥

उपाध्यक्ष महोदय, बात यह है कि :

भूताविष्ट उन्मत्त प्रयत्त प्राणी ।

जो भी निरर्थक प्रलाप कर जाये, उसका बुरा नहीं मानना चाहिये। मैं तो एक बात समझता हूँ। एक दिन महाराज नहुष जो कि परम तपस्वी माने गये हैं और जिन को सशरीर स्वर्ग का राज्य प्राप्त हुआ, उन महाराज नहुष की दृष्टि इन्द्राणी पर पड़ गई। इस सारे कुकर्म का फल उन को अन्त में सप बन कर भोगना पड़ा। मुझे इस बात का खेद है कि इस सभा के अन्दर जो कांग्रेसी महानुभाव बैठे हैं, मैं नहीं कहता कि उन में कुछ खराबियाँ हैं, लेकिन कुछ लोगों की ऐसी स्थिति हो गई है कि क्या सत्य और धर्म की बात है उस को बह सुनना नहीं चाहते।

मैं श्री टंडन को और स्वयं उपाध्यक्ष महोदय को धन्यवाद देता हूँ और मैं उन के लिये आभार प्रदर्शित करता हूँ। मैं जानता हूँ कि वे कांग्रेसी हैं और कांग्रेस में काम कर रहे हैं, परन्तु हिन्दू धर्म और हिन्दू संस्कृति से सम्बन्ध में बात-चीत करने में मुझे किसी पार्टी का पक्ष ले कर किसी पार्टी को कन्डेम नहीं करना है। मैं समझता हूँ कि वे भी हिन्दू हैं और इधर भेरे जो कम्युनिस्ट भाई बैठे हुए हैं वे भी हिन्दू हैं। वे सब लोग जो कि दूसरे के आदर्श को नहीं अपना चुके हैं, जो दूसरे देशों में अपना आश्रय नहीं रखते हैं और जो दूसरों की संस्कृति को अपनी संस्कृति

[श्री नन्द लाल शर्मा]

नहीं बना चुके हैं, वे चाहे कहीं भी बैठें हों, मेरे भाई हैं। मेरे भाई का लक्षण क्या है? मेरा भाई कौन है? यहां पर जो कोई उठता है, वह कहता है कि "मैं सनातनी हूं, मैं हिन्दू हूं।" मेरा भाई तो वह है जो कि मेरी माता को अपनी माता समझे और मेरे पिता को अपना पिता कहे और उनकी आज्ञा को माने। यहां पर कुछ लोग श्रुति रूपी मेरी माता को धो ठोकर मारते हैं, धर्म रूपी मेरे पिता को गाली देते हैं और फिर कहते हैं कि "बूक मैं हिन्दू हूं, इसलिये मुझे हिन्दू धर्म के बारे में कानून बनाने का अधिकार है।" ऐसे ही लोगों के लिये मनु ने कहा है :—

सहस्रशः समेतानां परिषत्तवन्नविद्यते ॥

अर्थात् ऐसे हजार व्यक्ति भी इकट्ठे हो जायें, तो भी उन से सभा नहीं बनती।

मैं यह कहना चाहता हूं कि इस बिल में सब से अधिक कलंकित अंश "डाइवोर्स क्लाज" है, जिसके सम्बन्ध में पिछले सत्र में आपको भी कहना पड़ा था कि वह उचित नहीं है। आप मोनोगैमी का आदर्श हमारे सामने रखते हैं और एकपत्नीत्व की दुहाई देते हैं। हम एकपत्नीत्व का स्वागत करेंगे, यदि, जैसा कि श्री टंडन ने कहा है, उसके साथ यह दूसरा पाप न हो। आप जो दायें हाथ से देते हैं, वह बायें हाथ से लौटा लेते हैं और "वन एंट ए टाइम" की व्यवस्था को आप एकपत्नीत्व का नाम देते हैं और हमारे सामने राम और राम-राज्य का आदर्श रखते हैं। यह जनता की आंखों में धूल झांकना है। हिन्दू शास्त्र इसके सर्वदा विरुद्ध हैं। श्री जगजीवनराम जी ने जो टण्डन जी का विरोध किया इस सम्बन्ध में मुझे कहना है कि यह

बिल उन पर लागू ही नहीं होता। इस बिल की क्लाज २६ में यह देखता हूं :

"Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage....."

उन बन्धुओं के लिये यह सेविंग क्लाज रख दिया गया है। उन लोगों के ऊपर इसका कोई प्रभाव नहीं पड़ता है। यह एक्ट उनको वैसे ही छोड़ देता है। ऐसी स्थिति में यह आवश्यक है कि डाइवोर्स क्लाज को दूसरे हिन्दुओं के लिये हटा दिया जाय।

दूसरी बात यह है कि डिज़ शन, रोग मस्तिष्क का विकार और क्रुएल्टी इत्यादि डाइवोर्स के कारणों को बतलाते हुये कई महानुभावों ने उन में "सन्यास" को भी सम्मिलित कर लिया। मुझे इस से बड़ा आश्चर्य हुआ। जो लोग हिन्दू शास्त्र को जानते हैं, उन को मालूम है कि कोई गृहस्थ अथवा कोई पुरुष, जिसके माता-पिता जीवित हैं, या जिसकी पत्नी है, बिना उनकी आज्ञा लिये संन्यास में प्रवेश नहीं कर सकता है। उसको पत्नी की आज्ञा ले कर ही संन्यास लेने का अधिकार है। ऐसी परिस्थिति में क्या कोई कह सकता है कि "हम तो भगवत-भजन करने जाते हैं और तुम यहां पर मौज करो"? ये बातें हिन्दू आदर्शवाद का ह्रास करेंगी उसको नीचे गिरावेंगी, जैसा कि अभी श्री टंडन ने कहा है। कानून जाति को आदर्श की ओर ले जाने के लिये बनाये जाते हैं, उसको ऊंचा उठाने के लिये बनाये जाते हैं। यहां पर बार बार यह तर्क दिया जाता है कि पुरुष यह पाप करता है, वह पाप करता है, इसलिये स्त्री को भी वह करने का अधिकार क्यों न हो?

Why should such facilities not be granted to women?

आप स्वयं यह सिद्धान्त मानते हैं कि दो पाप मिलने से एक पुण्य बन जायेगा, यह बात ठीक नहीं है। Two wrongs do not make one right. इसलिये मैं निवेदन करूंगा कि आप जितना परिश्रम हमारी माताओं को कुपन्य पर लगाने के लिये दिखा रहे हैं, उतना आप पुरुषों का सुधार करने में लगायें। आप क्रिमिनल लां में अमेंडमेंट करें और दूसरे पग उठायें। शास्त्रों ने बतलाया है कि "न द्विषन्त्याः परित्यागः" याज्ञवल्क्य का भी कहना है :

आज्ञासम्पादिनीं दक्षां वीरसूं प्रियवादिनीम् ।
त्यजन्दाप्यस्तुतीयां शमशक्तो भरणं स्त्रियः ॥

द्वेष करने वाली स्त्री का परित्याग करने का भी अधिकार पुरुष को नहीं है, शत्रुता रखने वाली स्त्री को भी छोड़ने का अधिकार नहीं है, और आज्ञा मानने वाली, योग्य पुत्र जनने वाली और प्रिय-वादिनी स्त्री

श्रीमती गंगा बेबी (जिला लखनऊ व जिला बाराबंकी—रक्षित अनुसूचित जातियाँ) : मैं यह पूछना चाहती हूँ कि इस कानून के तहत दिये कितने पुरुष इस बात को मानते हैं कि स्त्री की इज्जत की जाय और करते हैं? जब कोई चाहे स्त्री को निकालेता है और जब वह बात कानून से होने वाली है, तो आप उसको भ्रमण कहते हैं ।

श्रीमन् लाल शर्मा : यदि इस बात को स्वीकार भी कर लिया जाय कि बूँकि कानून नहीं है, इसलिये पुरुष अत्याचार करते हैं, तो हमारी बहिन इस बात को भी स्वीकार कर लें कि यदि कानून के द्वारा पुरुष को अत्याचार करने का अधिकार दे दिया गया, तो अत्याचार अवश्य

बढ़ जायगा। और फिर हम तो इस बात को स्वीकार ही नहीं करते हैं। इस सदन में कम से कम ५०० सदस्य हैं। अगर उन सदस्यों में से एक भी यहाँ पर खड़ा हो कर कह सके कि मैं अपनी स्त्री के साथ खुल्लम-खुल्ला अत्याचार कर रहा हूँ या मेरे घर में अत्याचार होता है, तो मैं इस बात को मान सकूँगा। पांच दौ में से एक दौ होगा। किन्तु मेरा निवेदन यह है कि ऐसा होने पर भी इस बात का तर्क कहीं भी नहीं मिलता है कि हिन्दू देवियों को कुमार्ग पर लगाना चाहिये ।

अभी टंडन जी ने सीता और सावित्री की कथा की ओर संकेत किया। आपके कथनानुसार वे तो पुरानी बातें हैं। मैं आपको बताऊँ कि अभी राजस्थान में कितनी ही सतियाँ हो चुकी हैं, जिनको पुलिस इंस्पेक्टर और कमिश्नर ने रोकने की चेष्टा की और जिनके शरीर में अग्नि स्वयं प्रकट हुई। अभी पाकिस्तान बनते समय, भारतवर्ष के टुकड़े होते समय, हिन्दू स्त्रियाँ अपने पातिव्रत्य को बचाने के लिये घाग में कूदीं और रावी नदी में कूदीं। उन्होंने अपने प्राण दे दिये परन्तु परपुरुष को अपने शरीर का स्पर्श नहीं करने दिया ।

[SHRI BARMAN in the Chair]

जिस जाति में यह पातिव्रत्य जीवित है उसके विषय में यह कहना कि बहुत शरीर की भूल है, बायोलोजिकल भ्रज है, जिस प्रकार खाना-पीना होता है, उसी प्रकार वह भी होता है, सर्वथा अनुचित है। कुछ पढ़ी-लिखी स्त्रियाँ उसको खान-पीने की तरह मानती हैं, इसलिये क्या उनको पतन का अधिकार दे दिया जाये? मैं निवेदन करूँगा कि आत्म-हत्या का अधिकार

[श्री नन्द लाल शर्मा]

अगर नहीं कहना, वह तो सर्वनाश
नहीं है।

श्री पी० एल० बालपाल (गंगानगर-
मुक्त-रजित-प्रमुखित जातिपां) : मैं
माननीय सदस्य से पूछना चाहता हूँ कि
आप कहते हैं कि अमुक स्त्री सती हो गई,
परन्तु क्या कोई पुरुष भी अपनी स्त्री के
लिये "सता" हुआ है ?

श्री नन्द लाल शर्मा : I am not
yielding. मैं इसका कोई उत्तर नहीं देना
चाहता हूँ। (अन्तर्वाचा)।

Mr. Chairman: Order, order. Why
this sort of interruption? He is not
giving way.

श्री नन्द लाल शर्मा : आप उस
अहंकार की भावना का परित्याग कर
दीजिये। इसमें श्री पाटस्कर का कोई
दोष नहीं है। हम तो इतनी बात जानते
हैं कि उनको जैसे ऊपर से संकेत हो रहा है,
वै ही बेकर रहे हैं। सदीनो राजसेवकः
वे विचारे तो राजसेवक हैं। अभी यह
संकेत किया गया था कि हम इसमें एक
कामा भी नहीं बदल सकते, नहीं तो यह
कानून फिर राज्य सभा को जायगा और
फिर से यह प्रपंच होगा। किन्तु हम
केवल यह कहते हैं कि आपको धर्म की बात
कहना बड़े व्यक्तियों का कर्तव्य है। सब
जानते हैं कि पांडवों की सूची-सूई-की
नोक जितनी पृथ्वी की मांग के लिये जब
दुर्योधन ने ना कर दी, तो उसका क्या
परिणाम हुआ। हमने आपसे केवल यह
कहा कि इस बिल में से डाइवोर्स के क्लार्क
को निकाल दीजिये, हिन्दू शास्त्र के साथ
हिन्दू का सम्बन्ध मत काटिये, किन्तु आपने
वह नहीं किया। उसके बदले में हम
एक शब्द कह देते हैं। हो सकता है कि

आज आपका बल सोने की लंका जितना
वीर्यता हो।

किन्तु एक बात है :

अधमघतेतावत्ततो भद्राणिपश्यति, ।
ततः समत्तान् जयति समूलं च विवश्यति ॥

हम को यह डर लगता है, हिन्दुओं
के लिये और कोई घर नहीं है, हिन्दू और
कहीं नहीं जायेंगे, उन का भारत ही घर है,
यहीं पर पैदा हुये हैं और यहीं पर जियेंगे
यहीं पर मरेंगे। इसलिये उन के धर्म
और उनकी संस्कृति का सर्वनाश करना
आप के लिये उचित नहीं है। यदि आप
फिर भी यह करेंगे तो हमारा यह दृढ़
विश्वास है कि आप को एक दिन.....

श्री धुलेकर : कहीं कोई शाप न दे
देना।

श्री नन्द लाल शर्मा : मैं शाप नहीं
देता। वे शब्द जो भगवान् कृष्ण ने
दुर्योधन को कहे थे दोहरा देना चाहता
हूँ :

एकाकी पादचारेण नोचे द्यास्यसि कौरव ।
मन्वाद्यो धर्मवक्तारस्तदा स्युर्मन्त्रपायिनः ॥

और कौरव अगर तुम्हें भकेला बिना
सहायता के पैदल भागते हुये पृथ्वी पर मैं
न देखूंगा तो मनु आदि धर्म शास्त्रकारों ने
मदिरा पी कर धर्म शास्त्र बना दिये ऐसा
निश्चय होगा।

मैं आप से निश्चय के साथ कहता हूँ
कि आज आप धर्म को कमखोर न समझें।
धर्म और ईश्वर ऐसी चीजें हैं जिन्हें आप
अगर दबाना चाहेंगे तो भी नहीं दबेंगी
ईश्वर प्रतिक्षण मच्छर पर तोप नहीं दागता।
समय आने पर जो आप अपने कर्तव्य का
पालन नहीं कर रहे हैं, इस से दूर जा रहे हैं,
उसका फल भुगतना पड़ेगा। आप यह

जो हिन्दू धर्म का सर्वनाश करने के प्रयत्न कर रहे हैं मैं निश्चय से कह सकता हूँ कि आप इस में सफल नहीं होंगे और वक्त आयेगा जब आप अपने किये पर पछतायेंगे। हिन्दू माता आपके ऐसे प्रयत्न करने पर भी अपने आदर्श से नहीं गिरेगी। आप उसका कुछ भी बिगाड़ नहीं सकते। हो सकता है कि कुछ श्रूणल्लायें अभी भी हिन्दुस्तान में हों लेकिन उन की संख्या बहुत कम है। फिर भी मैं यह निवेदन करता हूँ कि आप समझ लें कि लोग इस चीज को नहीं चाहते और हिन्दू विवाह एक सैन्टिमेंटल चीज है, एक पवित्र चीज है, इसको किसी भी हालत में तोड़ा नहीं जा सकता। मैं निश्चय से कहता हूँ कि मुसलमानों ने आप का साथ नहीं दिया, ईसाइयों ने आपका साथ नहीं दिया, आप के साथ अगर कोई जिया है या मरा है तो वह हिन्दू ही है....

श्री रघुनाथ सिंह (जिला बनारस—मध्य) : आपने भी तो साथ नहीं दिया।

श्री नन्द लाल शर्मा : आप भूल कर रहे हैं। अगर मैं न साथ न दिया होता तो मैं आज यहां पर बैठा न होता (interruption)। मैं पेशावर और फ्रंटियर से यहां आया हूँ। अगर मैं अपने धर्म को छोड़ कर वहां रहना चाहता तो बड़े आनन्द से रह सकता था। लेकिन मैंने अपने धर्म को त्यागना पसन्द नहीं किया। मैं ने वहां पर राम रहीम और कृष्ण करीम बन कर नहीं रहना चाहा। परन्तु मुझे अफ़सोस है कि जिस धर्म को मैंने मुसीबत पड़ने पर भी नहीं छोड़ा आज आप मेरे उस धर्म को मुझ से छीन रहे हैं और मुझे उस धर्म के अनुसार चलने नहीं देते।

इसलिये मैं आप से निवेदन करता हूँ कि यह बरसात के दिन बीत जायेंगे।

यास्यति जलघरसमयः तवचसमृद्धिलंघी
यसि भविता।

तटिनि तटद्रुमपातन पातकर्मकं चिरस्थायी ॥

बरसात के दिन बीत जायेंगे और ओ बरसाती नदी तेरी उछल कूद भी समाप्त हो जायेंगी। किन्तु अपन तट पर उगने वाले पेड़ों को गिराने का कलंक सदा के लिये तेरे मस्तक पर लगा रह जायेगा। इसलिये मेरा निवेदन है कि आप यह कलंक का टीका अपने माथे पर न लगायें। अपने भाईयों को कमजोर न समझें। आपको ईसाई मुसलमान ने बल नहीं दिया हिन्दू ने ही बलवान बनाया है।

तुर्पणारिप परित्यक्ता न प्ररोहन्ति तण्डुला :
एक चावल के ऊपर जो छिलका होता है अगर उसको उतार दिया जाये तो वह एक चावल खाने मात्र के लिये ही रह जाता है और उगने योग्य नहीं रहता। आप इंटरनेशनल जगत में कितनी ही प्रतिष्ठा पालें, कितना ही बाडंग कान्फ्रेंस इत्यादि में आप का नाम ही जाय लेकिन यदि आपने अपन घर में ही धर्म को मिटाने की कोशिश की, लोगों की मर्जी के विरुद्ध आप गये तो आप की परिस्थिति केवल उस चावल के दाने की तरह हो जायेगी जो कि खाने के योग्य रह जाता है उगाने योग्य नहीं रहता।

श्री सिंहासन सिंह (जिला गोरखपुर—दक्षिण) : यह डाइवोर्स का विषय काफी विवादप्रस्त विषय है और इस पर इस भवन का वातावरण भी काफी गर्मागर्म हो गया था। जब राजश्रुति टंडन जी अपना भाषण दे रहे थे तो काफी गर्मागर्मी देखने में आई। अगर हम इस डाइवोर्स की कलाज को रखना चाहते हैं तो मेरा विचार है इस के लिये इस बिल के सिवाय और कहीं भी कोई उचित स्थान नहीं है। अगर आप इस को रखना चाहते हैं तो रखिय और अगर नहीं रखना चाहते तो न रखिय लेकिन

[श्री सिंहासन सिंह]

इस के लिये किसी और ऐक्ट में रवाना हो यह मैं नहीं चाहता । अभी यहां पर कहा गया कि इस का स्पेशल मैरेज ऐक्ट में स्थान हो, यह मैं नहीं मानता । स्पेशल मैरेज ऐक्ट का एक अलग ही रूप है और यदि हम इस को उस में स्थान देते हैं तो हिन्दू समाज की श्रृंखला टूटती है, समन्वय नहीं रहता और इन कारणों से उसमें यह प्रोबिजन नहीं होना चाहिये । मेरे एक भाई जो मेरी बगल में बैठे हुये हैं कह रहे थे कि कानून हमेशा उत्तम श्रेणी के पुरुषों व स्त्रियों के लिये नहीं बनाया जाता वह तो कुछ मध्य श्रेणी के लोगों के लिये नहीं बना करता है । हम ने पीनल कोड बना रखा है । उसका इस्तेमाल और और डाकुओं के खिलाफ ही किया जाता है और भले आदमी भी उसका इस्तेमाल कभी कभी मजबूरी से करते हैं । तो इस वास्ते यह स्थान नहीं होना चाहिये कि उत्तम श्रेणी वाले या आदर्श रखने वाले को यह विधेयक किसी प्रकार हानि पहुंचा सकता है । चाहे कोई स्त्री हो और चाहे कोई पुरुष उन में किसी प्रकार का भी झगड़ा हो, किसी प्रकार का झगड़ हो, एक दूसरे पर विश्वास न हो, एक दूसरे के साथ रहना बरदाश्त न करते हों तो वे इस से फायदा उठा सकते हैं । इन सूरतों में मैं समझता हूं कि अगर इस प्रोबिजन को रहना है तो एक बात पर विचार किया जाना चाहिये । अभी रेणु जी ने कहा था कि इस में एक (desertion) डिजर्शन का क्लॉज भी होना चाहिये । यदि किसी का पति अपनी पत्नी को छोड़ दे, दो बरस तक, तीन बरस तक या एक बरस तक तो उस डिजर्शन की बिना पर भी तलाक देने का स्त्री को हक् होना चाहिये । यह इस बिल में एक कमी रह गई है और मैं पाटस्कर जी से अनुरोध करता हूं कि

वह इस कमी को दूर कर दें क्योंकि अगर डाइवोर्स रखना है तो इस में इस चीज का होना जरूरी है । एक स्त्री को छोड़ना, उसका त्याग करना एक बहुत भारी अपराध है और इस बिना पर तलाक लेने का हक् स्त्री को या पुरुष को जरूर होना चाहिये । आप देखेंगे कि क्लॉज १० के अन्दर जो कि ज्यूडिशल सेपरेशन के बारे में है यह लिखा है कि अगर एक ने दूसरे को दो वर्ष तक के लिये डिजर्ट कर दिया है, छोड़ दिया है तो ज्यूडिशल सेपरेशन हो सकता है । इस में यह भी लिखा है कि ज्यूडिशल सेपरेशन होने की बिना पर अगर दो बरस तक दोनों में फिर से कोहिबिशन न हो तो तलाक हो सकता है । अगर इस दफा को दफा १३ (c) के साथ मिला कर पढ़ा जाये तो पता लगेगा कि ज्यूडिशल सेपरेशन की डिफ्री हो जाने के बाद दो साल तक उन दोनों में कोहिबिशन न होवे तब तलाक का अधिकार मिलता है । यह बात मेरी समझ में नहीं आती । पहले तो दो वर्ष तक ज्यूडिशल सेपरेशन के लिये वेट करें और उसके बाद फिर ज्यूडिशल सेपरेशन की डिफ्री के बाद भी दो साल तक इन्तजार करें । अगर आप को डाइवोर्स के प्रोबिजन को रखना है तो आप को इस पर अच्छी तरह विचार करना होगा । इस के बाद आप क्लॉज १५ के अनुसार चाहते हैं कि तीन बरस तक तलाक का दावा न हो । यह मैं आपको धर्म के नाम पर नहीं कह रहा हूं कानून की हैसियत से कह रहा हूं । इसलिये मैं प्रार्थना करता हूं कि इस पर विचार किया जाये और इस पीरियड को कम किया जाये । अभी किसी ने यहां पर कहा कि अब इस में कोई तबदीली पाटस्कर साहब नहीं करेंगे । मेरी प्रार्थना है कि अगर

कोई सही बात और सच्ची बात कही जाती है तो उस पर विचार किया जाना चाहिये और उसे मंजूर किया जाना चाहिये। अगर आप को ज्यूडिशल सेपेरेशन व डाइवोर्स रखना है तो मैं चाहता हूँ कि जिन केसेज में डिजर्शन होती है अगर आप उन को छोड़ देंगे तो यह ठीक बात नहीं होगी। एक के द्वारा दूसरे का त्याग करना डाइवोर्स के लिये एक प्रधान कारण होना चाहिये। यह जो कनवर्शन, एडल्ट्री इत्यादि के बारे में सब-क्लाज रखे हैं, इस में एक डिजर्शन के बारे में भी सब-क्लाज होना चाहिये। अगर इस डाइवोर्स के प्रोविजन को आपको रखना है तो जैसा कि रेणु जी ने कहा डाइवोर्स लेने के लिये क्लाज १३ में डिजर्शन एक प्रधान कारण होना चाहिये।

मैंने अभी इस दफा १३ का मुकाबला दफा १० से किया। दफा १३ में हम देखते हैं कि डाइवोर्स के लिये तीन वर्ष की मियाद रखी गई है जब कि दफा १० में ज्यूडिशल सेपेरेशन के लिये दो वर्ष की मियाद रखी हुई है। एक ही कारण पर यानी बेनरल डिसीज की बिना पर १३ क्लाज में तीन वर्ष की मियाद रखी है जब कि दफा १० में उसी के लिये दो वर्ष की मियाद रखी है। अब दफा १३ के मुताबिक बेनरल डिसीज होने पर पति पत्नी सम्बन्ध विच्छेद कराने के लिये तीन वर्ष तक इंतजार करें और एक दूसरे से अलग नहीं हो सकते भले ही इस बीच एक की बीमारी दूसरे को लग जाये, तीन वर्ष बीत जाने पर सेपेरेशन के लिये दरखास्त दें। मैं चाहता हूँ कि दोनों धाराओं में एक ही मियाद होनी चाहिये और जो चीज एक जगह लागू है, वही दूसरी जगह भी लागू होनी चाहिये।

इसी प्रकार कोढ़ी होने की अवस्था में भी इस धारा के मुताबिक तीन वर्ष तक पार्टीज को इंतजार करना पड़ेगा अगर वे एक दूसरे को तलाक देना चाहें। वैसे तो हमारी हिन्दू पद्धति के अनुसार तलाक दिया ही नहीं जा सकता, लेकिन जब हम इस विधेयक में तलाक की व्यवस्था इस कारण से देने जा रहे हैं तो हमको देखना चाहिये कि तीन वर्ष में तो कोढ़ की बीमारी दूसरे को भी लग जायगी और तीन वर्ष तक इस कानून के अनुसार पति पत्नी को साथ साथ रहना पड़ेगा, तो मेरी समझ में नहीं आता कि हम अधिकार दे रहे हैं या ले रहे हैं और इस तरह तो मैं समझता हूँ कि आप तलाक का अधिकार नहीं दे रहे हैं बल्कि इस कानून के उद्देश्य को ही विफल कर रहे हैं :

इसी तरह दफा १२ जो हम पास कर चुके हैं और जिसके कारण औरतों पर काफी आपत्ति आयेगी। दफा १२ जो हमने पास की है उसके अन्दर यह दिया हुआ है :

"that the respondent was at the time of the marriage pregnant by some person other than the petitioner."

अब आप इससे समझ सकते हैं कि वायड एंड वायडेबुल मैरिज को ले कर कितनी कठिनाइयाँ हमारे सामने आयेंगी और मेरी धारणा यह है कि अगर दोनों में नहीं पटी और शादी होने के साथ गर्भाधान हो गया और वह लड़का या पुरुष उस स्त्री के साथ नहीं रहना चाहता और उससे छटकारा पाना चाहता है तो वह इस तरह की तदरखास्त दे सकता है कि मेरी स्त्री किसी परपुरुष से गर्भवती है, यह मुझे पहले मालूम नहीं था, और विवाह-विच्छेद कर दिया जाय। मैं चाहता हूँ कि जैसा श्रीमती राय जी ने कहा कि शादी अब रजिस्टर

[श्री सिंहासन सिंह]

होने जा रही हो तब उसके अन्दर सब चीज लिख दी जाये जिससे बाद में इस तरह की बेजा हरकतें न की जा सकें। यह खामी मैं इस बिल में देख रहा हूँ और मुझे आशंका है कि इससे समाज में बड़ी विश्रुलता उत्पन्न होगी और इसलिये मेरा निवेदन है कि हम इस कानून को और इसकी धाराओं को खूब सोच समझ कर पास करें ताकि इनका दुरुपयोग न हो सके और जो स्त्री जाति को राहत पहुँचाना हमारा उद्देश्य है वह डिफ़ीट न हो जाय।

जहाँ तक दफ़ा १६ का सम्बन्ध है और जो Legitimacy of children by begotten of void and voidable marriages से ताल्लुक रखती है। मैंने कल भी इस सवाल को उठाया था कि दफ़ा ११ के अन्दर कानून में दी गई किन्हीं आपत्तियों के कारण अगर मैरिज वाइड हो जाती है तो उस वायड मैरिज का जो कोई लड़का होगा व शुरू से ही गैर कानूनी और इलिजिमेट होगा। अब इसमें ऐसी घटना घट सकती है कि अगर कोई शादी दफ़ा ११ और ५ के विरुद्ध हुई, कुछ दिन के बाद उन दोनों के संयोग से गर्भाधान हुआ और गर्भाधान के बाद पुरुष मर जाता है और दफ़ा १६ के अन्दर विवाह विच्छेद का मौका नहीं आता और वह लड़का पैदा होता है तो मौजूदा प्राविजन की रू से वह लड़का उस सम्पत्ति का वारिस नहीं होगा लेकिन अगर किसी कारण से विवाह विच्छेद होता है तो वह लड़का पार्टिज का लेजिटिमेट चाइल्ड माना जायेगा और सम्पत्ति का वारिस होगा, इस तरह के दो तरह के कानून होना उचित नहीं है। इससे तो यह मतलब होगा कि हम चाहते हैं कि दफ़ा ५ के विरुद्ध शादियाँ हों। हम चाहते हैं कि समाज में दोनों क्रम जारी रहें। जो एक मर्तबा शादी हो जाय वह हमेशा

के लिये लेजिटिमेट हो। अगर आप वास्तव में चाहते हैं कि इस प्रकार की शादियाँ हों जो कि दफ़ा ५ के विरुद्ध जाती हैं तो दफ़ा १६ को आपको निकाल देना चाहिये।

Shri B. N. Misra: My amendments relate to clauses 13, 14 and 17 and I shall confine myself to the points enumerated therein. But the Bill as a whole has my full support.

My first amendment relates to clause 13(2)(ii) which reads:

“that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality,”

I want that the last two words “or bestiality” to be dropped, because the word ‘bestiality’ means ‘beastliness’. My submission is to this fact that this is a very general term.

Shri Pataskar: May I give you the dictionary meaning of the term? It means, a human being having sexual relationship with a beast.

Shri B. N. Mishra: If that is taken to be the meaning of that term, then I have got nothing to say.

My next amendment is to clause 14 and it says that the following portion contained in the lines 13 to 15 may be omitted:

“May, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the expiry of three years from the date of the marriage or”.

In the Bill it has been provided that before the end of three years since the date of marriage, no petition can be entertained, but in certain exceptional cases leave may be obtained to present a petition before three years. But if leave has been obtained by any misrepresentation or concealment of the nature of the case, the decree shall take effect after three years. My submission is that this goes to show that you are just helping the cases of those

persons who may put in a petition by any misrepresentation or concealment of the nature of the case. I say in all fairness such persons should not be allowed to go to a court of law and put in a petition by any misrepresentation of the case. Therefore I submit that this portion may be deleted.

I am surprised at clause 17 as I do not find any relevancy in retaining that. In my opinion, it is redundant. It reads:

"Any marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and" etc

This has already been provided for in sub-clause (i) of clause 5 and clause 11; in the context of those clauses, clause 17 is redundant. My submission, therefore, is that clause 17 must be deleted.

2 P.M.

Shri N. B. Choudhury: Clause 13 provides for the grounds of divorce and has not made any provision regarding desertion. If a provision for desertion is not made, the liberating significance of this clause is minimised to a great extent. At least it becomes very much limited. We know that there are cases where either the husband or the wife is deserted for a number of years. There are other amendments which provide for grounds of divorce if the desertion has been for a period of two or three years. But my amendment is for five years. Even if the Government are not willing to accept any amendment which puts the period for three years only, I think my amendment which provides the ground for divorce in case there has been desertion for five years should be accepted. Otherwise, the parties will have to go for judicial separation and that will mean another period of four or five years. So, the advantage of this Act cannot be availed of by the parties. We know that there are hard cases where the people are suffering because of the lack of

any such provision. There is no such provision made here under this clause, which would enable such persons to have a divorce which must be considered justifiable under such conditions. Therefore, I commend my amendment for the acceptance of the House.

पंडित ठाकुर दास भार्गव : मैं ने चन्द ऐमेन्डमेन्ट्स के नाटिस दिये हैं जिनके बारे में मैं श्री पाटस्कर साहब से, जो कि अपनी सीट पर मौजूद नहीं हैं और जो मेरी बात को सुन भी नहीं रहे हैं, कुछ कहना चाहता था। मेरी समझ में नहीं आता है कि किस की उनकी तरफ तवज्जह दिलाऊँ।

रक्षा संगठन मंत्री (श्री त्यागी) : मैं सुन रहा हूँ।

पंडित ठाकुर दास भार्गव : आप सुन तो रहे हैं, लेकिन आप समझते नहीं हैं। मुझे आप माफ़ करेंगे ऐसा कहने के लिये क्योंकि जो कुछ मैं कहना चाहता हूँ वह एक काम्प्लिकेटेड लीगल प्रॉब्लेम है।

श्री त्यागी : यह तो शादी की प्रॉब्लेम है।

पंडित ठाकुर दास भार्गव : मैं शादी की प्रॉब्लेम पर नहीं बोलूंगा, मैं कानून के बारे में बोलना चाहता हूँ। जिनकी शादी शुदा जिन्दगी आज नहीं है उनके सामने शादी की बात करना बेकार है। मैं तो सिर्फ़ थोड़ी कानूनी बातें करना चाहता हूँ। मैं एम्प्टी बेन्चेज से भर्र कर रहा हूँ। लेकिन यह बद-किस्मती की बात है कि हमारे डिप्टी स्पीकर साहब ने और स्पीकर साहब कई मर्तबा ट्रेजरी बेन्चेज के लिये कहा कि वह मौजूद रहा करें और अगर वह नहीं मौजूद रह सकते तो कम से कम उनके प्रतिनिधि यहां पर मौजूद रहा करें। एक एक मिनिस्ट्री में कई कई मिनिस्टर हैं, लेकिन अफसोस है कि जब ऐसे कानूनी और दकीक़ मसले पेश होते हैं तो न कोई मिनिस्टर हमारे

[पंडित ठाकुर दास भागंब]

सामने रहता है न कोई उनका प्रतिनिधि रहता है। अग्निलो तो मैं यही शुभहा करता हूँ कि जो कुछ हम कहते हैं उस पर और भी होता है या नहीं, लेकिन कम से कम जो कानूनी मसले हैं

श्री सिंहासन सिंह : यह जो लंच टाइम है इसलिये कोई नहीं है।

पंडित ठाकुर दास भागंब : मैं एम्प्टी बेन्चेज से अर्ज करना चाहता हूँ। मैं अपने मतलब की तरफ आता हूँ। सब से पहले मैं क्लोज १८ की तरफ तबज्जह दिलाना चाहता हूँ। क्लोज १८ के अन्दर जिन जरायम का जिक्र है, उन में से कुछ तो वही जरायम हैं जो कि चाइल्ड मैरेज रिस्ट्रेंट ऐक्ट, १९२९ में हैं। मेरे स्थान में श्री त्यागी को इसका इल्म होगा। वह हाँ नहीं कहते हैं, इसलिये मैं समझता हूँ कि उनको इसका इल्म नहीं है। कि मैं बहुत अदब से अर्ज करना चाहता हूँ कि उसके अन्दर एक दफा ३ है, जिसके अन्दर उस लड़के के लिये जिसकी उम्र १८ वर्ष से ज्यादा हो और २१ वर्ष से कम हो, अगर वह छोटी उम्र की लड़की से शादी कर ले, तो उसके लिये चाइल्ड मैरेज रिस्ट्रेंट ऐक्ट के मुताबिक थोड़ा सा पनिसमेंट है। इसी तरह से उसमें दफा ४ है कि अगर लड़के की उम्र बढ़ी है और वह १४ साल से कम उम्र की लड़की से शादी कर लेता है तो उसके लिये ३ महीने की सजा रखी गई है। लेकिन आज जो कानून बन रहा है इसमें हमने जो सजा रखी है वह १५ दिन। मैं पूछना चाहता हूँ कि आखिर आप कौनसा कानून लागू करना चाहते हैं? इसी तरह से वहाँ एक दफा ५ है और एक दफा ६ है। इन दोनों में जो सजायें हैं वह तीन महीने की हैं। इसमें जो सजायें मुकरंर की गई हैं वह एक महीने की हैं। मैं अर्ज करना चाहता हूँ कि जिन साहब ने यह कानून

बनाया है उनको तो चाइल्ड मैरेज रिस्ट्रेंट ऐक्ट को देख लेना चाहिये था। आपने इस ऐक्ट के अन्दर कितना ग़ज़ब किया है जब आप यह लिखते हैं :

"Every person who procures a marriage of himself or herself to be solemnized under the Act in contravention of the conditions specified in clause 3 of Section 5 shall be punishable with simple imprisonment which may extend to fifteen days".

मैं पूछना चाहता हूँ कि अगर एक १४ बरस की लड़की, १५ बरस की लड़की या १६ बरस की लड़की अपनी शादी किसी तरह से करा लेती है तो क्या आप उसको कैद करेंगे? यह कानून आप बनाना चाहते हैं? लड़की १८ बरस की भी नहीं है इस कानून में, अगर लड़की १८ बरस से कम है तो चाइल्ड मैरेज रिस्ट्रेंट ला के मुताबिक उसको सजा नहीं हो सकती। यहाँ पर आप १५ बरस की लड़की को भी सजा देना चाहते हैं। और १५ बरस के लड़के को भी सजा देना चाहते हैं। सरकार ने १५ बरस की बात रख दी लेकिन वह लड़की चाहे १५ बरस की हो चाहे १३ बरस की हो, पेनल कोड के हुक्म के मुताबिक ७ बरस तक किसी को सजा नहीं हो सकती। ७ से ले कर १३, १४ बरस तक का सवाल यह है कि इस उम्र की लड़की में यह काबिलियत ही नहीं है कि वह कानून की नवैयत को समझ सके।

मैं यहाँ पर एग्री पर्सन में नहीं जाना चाहता, मैं तो नाबालिगों पर ही बोलना चाहता हूँ।

एक माननीय सदस्य : पर्सन के माने होते हैं १८ बरस के ऊपर।

पंडित ठाकुर दास भागंब : जो साहब यह कहते हैं मैं उनसे यह कानून सीखना चाहता हूँ कि कौनसा कानून है जिसमें

यह दर्ज है। मैं श्री त्यागी जी से समझना चाहता हूँ कि क्या यह ठीक है जो कि मेरे एक दोस्त कह रहे हैं कि पर्सन के माने १८ बरस के ऊपर के आदमी से होता है।

श्री त्यागी : पर्सन में कोई कैंद बरस की नहीं होती।

पंडित ठाकुर दास भार्गव : मैं क्या यह मान लू कि जो त्यागी साहब कह रहे हैं वह दुस्त है ? इस वक्त वह ला मिनिस्टर बन गये हैं। क्या वह मानते हैं कि यह जो कानून दफा १८ में बन रहा है वह बिल्कुल गलत है ? जब तक चाइल्ड मैरेज रिस्ट्रिक्ट ऐक्ट की दफा ३ मौजूद है तब तक इसको नहीं माना जा सकता। हमने उस दिन जो कानून रखा था वह यह था कि अगर लड़के की उम्र १८ बरस से ज्यादा हो और २१ बरस से कम हो और माँ बाप उसकी शादी कर दें तो उनको यह सजा हो जायेगी। हम ने यह कानून जिस दिन बनाया था उस वक्त यह तय किया था कि लड़की को किसी सूरत में भी सजा नहीं होगी उसमें ऐसा प्राविजन है कि बौमन को कैंद की सजा नहीं होगी लेकिन आपने सारी औरतों को कैंद करने की ज़िम्मेदारी ले ली है। मैं समझता हूँ कि यह जो दफा १८ है वह ट्रैस्टिकली चेंज होनी चाहिये। जब तक चाइल्ड मैरेज रिस्ट्रिक्ट ऐक्ट की दफा ३, ४ और ६ मौजूद हैं तब तक सजा भी कम नहीं हो सकती है। इसलिये उम्र २१ और १८ के बीच में होनी चाहिये।

श्री त्यागी : मेरे स्थान में इस मसले पर गौर किया जा सकता है।

पंडित ठाकुर दास भार्गव : शुक है कि आप ला मिनिस्टर नहीं हैं तभी ऐसा कहते हैं, ला मिनिस्टर तो इसमें एक कामा भी हब्दील नहीं करना चाहते हैं।

अब मैं पनिसमेंट के बारे में अर्ज करना चाहता हूँ। चाइल्ड मैरेज रिस्ट्रिक्ट ऐक्ट में है :

"whoever performs, conducts or directs any child marriage".

जो ऐक्टर हैं वह भी सारे के सारे इस दफा ५ में आ जाते हैं और उनके लिये जो सजा है वह तीन महीने तक की है। मैं जनाब वाला को भी याद दिलाना चाहता हूँ। जनाब वाला इस हाउस के मेम्बर थे। मैंने यह मोशन रखा था कि इस वास्ते कि चाइल्ड मैरेज बन्द हो जायें कैंद की सजा लाजिमी करार दे दी जाय। मैं यह बिल हाउस में लाया था और हाउस में उसको कबूल किया गया था। हमने कैंद की सजा लाजिमी कर दी थी कि छोटी उम्र की शादियां करने वालों को कैंद की सजा दी जाय। लेकिन इस बिल में फिर खुली छूट हो गई है महज जुमनि को सजा हो सकती है :

आप देखेंगे कि जो दफा १८ में दूसरा क्लॉज है उसमें लिखा है :

"in the case of a contravention of the condition specified in clause (iv) or clause (v) of section 5, with simple imprisonment which may extend to one month, or with fine."

मैं अर्ज करना चाहूंगा कि जब आप छोटी उम्र की शादी के वास्ते यह सजा देते हैं तो जो लोग अपने धर्म को जानते हैं हेरिडिटी और जेनेटिक्स और यूजेनिक्स को भी जानते हैं जब वह लोग कानून के खिलाफ बर्जी करते हैं तो उनको भी सजा होनी चाहिये। हमारे यहां जो प्रथायें चली आ रही हैं कि हमें प्राहिबिटेड डिगरीज के साथ और सपिण्डा के साथ शादी नहीं करनी चाहिये तो ऐसे लोगों को जो कि इस कानून के खिलाफ बर्जी करते हैं उनके साथ क्यों रियायत करना चाहते हैं ? आप उनको एक महीने का सिम्पुल

[पंडित ठाकुर दास भार्गव]

इम्प्रिजनमेंट या जुर्माना या दोनों ही क्यों रखना चाहते हैं ? मैं अर्ज करना चाहता हूँ कि अगर आप दरअसल इसके कायल हैं कि यह चीज नाजायज है कि इस तरह की शादियाँ की जायें भाई बहन आपस में शादी करें मां बेटे से शादी कर ले या बाप बेटी से शादी कर ले कम से कम मैं इससे ज्यादा गुनाह किसी दूसरी चीज को नहीं मानता हूँ, पेनल कोड में इसके लिये दफायें नहीं रखीं, यहाँ एक दफा रखते हैं, वह क्या कहती है, इन लोगों से अगर कोई नाजायज ताल्लुक हो जाये तो उसके लिये कोई सजा मुकर्रर नहीं है, लेकिन अगर कोई बाकायदा शादी कर ले तो उसके लिये आपने कह दिया कि एक महीने की सिम्पुल सजा होगी या जुर्माना होगा या दोनों होंगे । मैंने स्थाल में कानून बनाने वालों ने जो कुछ बना कर हमारे सामने रखा है, कम से कम लोगों की भावनायें उसके सक्त बरखिलाफ़ हैं ।

इसी तरह आगे चल कर (सी) में सजा सिर्फ़ एक हजार रुपया जुर्माना रखी गई है । मैंने इसके बारे में एक अमेंडमेंट रखी है, जिसके मुताबिक मैंने चाहा है कि जब तक मौजूदा कानून को हटाया न जाय, जब तक वह आपरेशन में है, तब तक उसके बरखिलाफ़ कानून नहीं बनाया जा सकता है । आप एक बात पर दो कानून नहीं बना सकते हैं । मैंने तजवीज किया है कि जो शक्स खिलाफ़-वर्जो करे, उसको सक्त सजा दी जाये । इस सिलसिले में मैंने एक दफा बना कर लिख दी है कि जिस तरह उन लोगों के लिये सजा मुकर्रर है, जो छोटी उम्र की शादी के लिये जिम्मेदार होते हैं, रुपया लेते हैं, देते हैं और शादी कराते हैं, उसी तरह जो लोग ऐसी शादी के लिये जिम्मेदार हों, उसमें हिस्सा लें और उसको अर्ज करें, जो कि इनसैम्बुअस हो, उनको सक्त सजा होनी चाहिये और ऐसा करना जुर्म

करार दिया जाना चाहिये । मैं अर्ज करना चाहता हूँ कि उन लोगों को, जिनकी मिसाल कल हुक्म सिंह साहब ने दी थी, ...

Mr. Chairman: The hon. Member must conclude now.

Pandit Thakur Das Bhargava: I am very sorry, I will not be able to finish within such a time. I am only speaking on the first amendment. I have got ten amendments.

Mr. Chairman: What about others?

Pandit Thakur Das Bhargava. In that case either you restrict the number of amendments that a Member can move—say only one amendment can be moved—or give more time to speak.

Mr. Chairman: That is not for me to do. The hon. Member himself was a member of the Business Advisory Committee. The Business Advisory Committee has fixed the time. They have allotted 4 hours for this group of clauses. This will be over by 3-27 P. M. The hon. Minister wants more than half an hour. I have told him that I shall call him at 3 P.M. Now, there are so many Members who want to speak.

Pandit Thakur Das Bhargava: I am not unmindful of the fact that there are many Members who have given amendments like me and who want to speak. But that is not my fault. I as a Member want to see that at least I get the opportunity of saying what I have to say that other Members may hear and may be influenced. The hon. Minister is not here. I am sitting here from morning and listening to the speeches. I have not been given a chance to speak. I have to point out the deficiencies. Sir, I have seen that those Members who have not tabled any amendments have been given chance to speak as if it is a general discussion. I do not know how a Member who has tabled 10 amendments can finish in 5 minutes.

Mr. Chairman: I do not know what the hon. Member would have done himself, had he been in the Chair.

Pandit Thakur Das Bhargava: I can assure you that while we decided this matter in the Business Advisory Committee, we thought that 4 hours would be sufficient for these clauses. If you allow a general discussion on each question then the time will not be sufficient. This has been the practice here. I have seen that Members who have not spoken during the general discussion have been allowed, during this stage to poke in their noses and speak not only in respect of amendments but on all sorts of things. This has happened. Otherwise, those Members who did not take part in the general discussion and those Members who did not give any amendments should not have been allowed to take part in the discussion now in a general manner. That is what I would like to point out.

Mr. Chairman: Now, there are so many Members to speak.

Pandit Thakur Das Bhargava: I have got many more important points, but I will try to finish in five minutes.

Mr. Chairman: Yes, finish in five minutes.

Shri S. L. Saksena: Those who have more amendments must be given more time.

Pandit Thakur Das Bhargava: Now, I come to clause 16. We have seen many wonders in this world, but I have never seen a case where a person comes to the court and complains that his wife was pregnant at the time when he was married and that he did not know of this fact. He comes to the court and says that his marriage may be avoided on this score. The marriage is avoided by the court. The court says: "Yes, your wife was pregnant when you married. It is not your fault. You never knew it and therefore, your marriage is void according to the law of the land". Yes, what happens to me. The child becomes my child. I am made the

father of the child. I know the child is not guilty but at the same time am I guilty?

Shri R. D. Misra (Bulandshahr Distt.): Yes. Why you married such a girl?

Pandit Thakur Das Bhargava: I go to the court and get it established that the woman was pregnant from some other person and yet the fatherhood would be placed upon me. I think this is very strange. Therefore, either as Acharya Kripalani says, make marriage an offence—I can understand that—otherwise, my submission is that clause 16 is madness run amuck.

Again, have you ever heard of an impotent person capable of producing children? Supposing it is proved under section 112 that a person is impotent, no person can say that he can be the father of a child. Here by fiction—after all fictions are also there—it appears that the son of an impotent father becomes the son of that man. I cannot tolerate this. This is against law. The fiction is not so wide as that.

Shri M. S. Gurupadaswamy (Mysore): What is your suggestion.

Pandit Thakur Das Bhargava: See section 112 of the Evidence Act. If a person remained outside the country for years and his wife gave birth to a child, that cannot be a legitimate child. We never desire to throw the sin of some other person upon you.

I was submitting in regard to clause 13. In regard to this clause also I have given some amendments which may be taken as moved. But I have to submit one thing. Some of my friends including Shri Deshpande and others, were very wrath at Shri Tandon when he proposed that you have got another law called the Special Marriage Law and there are provisions about divorce etc. In that law and divorce minded people may take advantage of that provision. Many people did not like it. I do not myself like the idea. I want that the Hindu

[Pandit Thakur Das Bhargava]

Marriage Law should be complete by itself. I do not favour this idea, but at the same time I want, very humbly, to ask the Law Minister what kind of divorce does he want to bring in this Bill as opposed to Shri Tandonji's suggestion. When Tandonji says: "differentiate between those who believe in divorce and those who do not believe in divorce; have the Special Marriage Act, but keep this pure", you are angry. But what are you doing? There are some persons who do not believe in divorce. They come under section 13. But, there is another clause in which divorce has been in vogue for the last so many years. For them the hon. Minister is going to have another law. He says that if there are any instances of custom which allow divorce to be in vogue, among those tribes or castes—they want to perpetuate castes as this countenances Caste Panchayats—then there will be another law. They want to go against provisions of article 14 of the Constitution. They want to differentiate between Hindus and Hindus. For some people clause 13 applies and for some others it is custom.

Acharya Kripalani (Bhagalpur cum Purnea): This Bill has already differentiated between Hindus, Muslims and Christians. Have you accepted that?

Pandit Thakur Das Bhargava: I am not accepting anything. I want that there should be one uniform Code for all Indians. I never accepted anything.

Acharya Kripalani: Let your steam roller legislation go for them.

Pandit Thakur Das Bhargava: This is entirely different. Here you are differentiating between Hindus and Hindus. I do not want that. I do not want that the persons among whom divorce is prevalent should be put to any trouble of going to district courts. But, I do want that you may have Panchayat Courts; you may have arbitration or some other course. But,

without the authority of law no marriage should be dissolved. May I humbly submit for your consideration, section 30 of the old Hindu Code on which the entire edifice was built and Dr. Ambedkar rightly said—he spoke from a nationalist point of view:

"Notwithstanding anything contained in this Part, no marriage solemnized, whether before or after the commencement of this Code, shall be deemed to have been lawfully annulled except by a decree of a competent court passed in that behalf."

I want, Sir, any divorce, in whatever community it may be existing should not take place without the decree of some court. I do not want the District Courts to make people spend money and put them to trouble. I am very anxious that the grounds of divorce must be exactly the same among those who do not practise, who are called regenerate classes, and other classes. I am in favour of divorce. I am in favour of this Bill. But consider what is being done by the Ministry in this matter. I am very sorry that I lent my support to such a Bill. I am ashamed of this Bill which wants to drive a wedge between Hindus; which wants to make customs as the solitary guiding factor. The whole thing is enacted in this way. What you aim by this is to perpetuate caste and to allow a wedge to be driven between the different classes of Hindus. If you cannot make a uniform law for all the Indians, you can and ought to make one law for all Hindus at least. Even for Hindus you are making different laws. Then the very purpose for which you want codification goes away.

I am sorry I have no time to speak on other amendments. I have not spoken about eight or nine amendments of mine. But I gave you my word that I could finish within five minutes, and therefore I am finishing.

PAPER LAID ON THE TABLE

EVIDENCE ON COMPANIES BILL

The Minister in the Ministry of Law (Shri Pataskar): I beg to lay on the Table a copy of the evidence tendered before the Joint Committee on the Companies Bill, 1953. [Placed in Library. See No. S-190/55.]

HINDU MARRIAGE BILL—contd.

Shri Tek Chand: Will opportunity be given to those who have given several amendments and not participated even in the general discussion?

Mr. Chairman: Why does the hon. Member repeat the same point? I have made it clear that there is a limited time, and within that limited time I am just allowing as many Members as possible. I cannot create time for every Member. How can I increase the time?

Shri Sarangadhar Das: I have to submit that when the amendments tabled by the Members come on the floor of the House they are the property of the House and every Member, whether he has given an amendment or not, has the right to speak and I am glad you have given me this opportunity.

I have listened to the debate for so many days, and particularly to the debate on divorce. I am glad to note that some of the orthodox Hindu Members, whether they belong to the Mahasabha or to the Ramrajya Parishad or to the Congress, have joined together in opposing the divorce clause to the utmost. I concede their sincerity. I do not blame them. But at the same time I wish to remind them that there is no use talking about the ideal marriage, sanctity of sacramental rights, and so on and so forth. In our society we have all kinds of ideals which we repeat saying every day, but we do just the opposite in action.

In the matter of divorce, there is so much opposition to it from the orthodox section, which is natural almost all over the world for men, because

the men have a certain amount of inhibition when women's affairs are concerned. A man has the right to marry as many times as he likes. In our Hindu society he has four or five wives at the same time. That is allowed in Hindu society, while in other societies, where there is monogamy, they marry one after another; one is dead or divorced, and then they marry again. But when it comes to a woman's taking another spouse, then there is objection. That is why I say that in the whole human society there is inhibition in this respect, and in Hindu society it is much more so.

When women's rights are mentioned, then come along Ramchandra and his wife Sita. But may I remind my orthodox friends that Ramchandra's father had four wives, at least four married wives and many others?

An Hon. Member: Three.

Shri Sarangadhar Das: All right, three. He had three wives, but the son became an exception. He was loyal to his wife and did not marry again. We have such exceptions all over the world, in every society. It is not only in Hindu society, but other societies also have these exceptions.

We have to look to the realities of the situation. There is no doubt that in Hindu society there are wives who are ill-treated by their husbands—I will define Hindu society—and they have no way because there is no divorce law. That is why it becomes essential that we should have a law permitting both men and women equally to take resort to divorce when it becomes necessary under the grounds mentioned here.

Hindu society, the ideals of which were referred to by the venerable Member from Uttar Pradesh, is restricted only to, I should say, Brahmans, Kshatriyas and Vaisyas to these three main castes and their sub-castes. All the rest of the people—not only Harijans and Adibasis, let us separate them—but in the touchable Hindu society there are hundreds of castes who have divorce, and the

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society has not gone upside down after all these centuries or thousands of years. So, while introducing divorce into Hindu law, you are not going to upset Hindu society.

Pandit D. N. Tiwary: Ask your Leader.

Shri Sarangadhar Das: But you give the opportunity to a couple, whether man or woman, if they are not satisfied with each other for some reason or other or there are diseases of one kind or another, to separate.

In this connection reference has been made by so many speakers to western society, to Christian society, where they have provision for divorce. One of the Members has spoken about the prevalence of a large number of divorces in the United States. Sir, I had lived there for many years and recently I have seen a demographic survey conducted by the United Nations Organisation. And that gives the figure of divorce as 10 per cent of the marriages. That is the latest figure. But without going into those figures, I can say here boldly for the information of my friends that in American society, although they have cases of divorce, the unusual ones that are advertised here give the impression to our countrymen that they are divorcing each other everyday. That is not so. I have seen hundreds and thousands of families where they live a happy life, contented life, loyal to each other, not only in their material world but in their spiritual world also. So it is not proper to go and say what they have in America or what they have in Great Britain. It is for us to see what our country needs.

I also wish to mention that inasmuch as you have given equal political rights to women, you are bound to concede social equality and economic equality. Those will flow from the political rights. And what we are enacting today in this Marriage Bill is not a gift being given to the women but that social mobility which is

essential for building the nation and the society.

Shri R. N. S. Deo: I have moved amendment No. 379 and amendment No. 389 to clause 13 of the Bill and also No. 398 to clause 15 of the Bill.

When we are considering a social legislation of this type, we should examine it from the point of view of necessity, utility and its effects, and we should also consider the provisions from the point of view of rationality and consistency with the objective. In amendment No. 379, I have suggested the deletion of sub-clause (iv) of clause 13, which reads:

"has for a period of not less than three years immediately preceding the presentation of the petition, been suffering from a virulent and incurable form of leprosy; or".

I consider this provision to be based on ancient prejudice. It is neither scientific, nor is it just that leprosy should be made a ground for divorce. Shrimati Renu Chakravartty yesterday suggested the deletion of word "virulent" and she also quoted the opinion of the Director General of Health Services to show that in certain cases of leprosy, the disease is curable but is a long drawn process. It is absurd to say that any disease is incurable. Nobody in this world can say that any disease is incurable. Therefore, to have the words "incurable form of leprosy" is absolutely absurd. As regards the opinion which was partially quoted by Shrimati Renu Chakravartty, we have also got the opinions of other doctors. She referred to the resolution passed at the conference of All India Leprosy Workers held at Puri in January 1953. That is also the opinion of the Indian Association of Leprologists. What are the facts about leprosy? There are 12,00,000 cases of leprosy or estimated cases in the Indian Union, and out of them 10,00,000 are benign and non-contagious, that is, 80 per cent of the cases are non-contagious. The other facts about this disease are that it is

neither hereditary nor readily communicable; it is not always progressive—often abortive; there is spontaneous healing often taking place early or late in the disease; it is not usually fatal and it is curable. Then, the further facts about the disease is that it has no adverse effect on pregnancy; it is not hereditary; it does not cause impotency or sterility and in a small number of cases only, it causes deformity, paralysis or ulceration. On the contrary, tuberculosis, which is much more infectious and is also hereditary, is not made a ground of divorce. On what logic is it contended that leprosy should be included as a ground of divorce?

An Hon. Member: Because it is loathsome.

Shri R. N. S. Deo: It has been justified only on the ground that it is a loathsome disease. That is the justification given by the Minister and Shrimati Renu Chakravartty said that it is repulsive. But if ulcer or deformity makes the diseased person loathsome, then there are many kinds of diseases, which cause worse forms of deformity. As for example, small-pox, poliomyelitis, progressive muscular atrophy, syringomyelia, Raynaud's disease, injury of motor nerves, etc. These are not made grounds of divorce. Then, on what logic can we justify the inclusion of leprosy? Let us consider the effect of this provision.

Pandit K. C. Sharma: It is recognised as a reason for divorce in all codes of marriage law.

Shri R. N. S. Deo: I challenge this statement. I would submit that leprosy being made a ground of divorce is not found in the divorce laws of any country. It enters as a ground for divorce only in Denmark and Sweden, there also not as a direct ground, but only in case the disease has been concealed before marriage. In no other country does leprosy find a place in the law of divorce. What will be the effect of this provision? It will mean that those unfortunate persons, who suffer from this disease and who are already married, will be put to diff-

culty; their family life is likely to be disrupted, even though those cases may be closed cases, benign cases and non-contagious cases. It would also either prevent such persons from marrying in the future or force them to conceal their disease, which is far worse. Through the work of social workers and the Leprologists Association during the last 25 years, there has been a change of attitude towards this disease in our society, and all this good work will be made absolutely useless if you have this provision. While this disease is easily curable if tackled in the early stages, if you have this provision, it will encourage people to conceal it and not have themselves treated, thereby making the conditions far worse. Therefore, it is bad from the scientific or medical point of view as well as from the humanitarian point of view and there is no justification for this ground.

I will briefly refer to the other amendment No. 389, where I have suggested deletion of lines 40 and 41 on page 8 of the same clause—"that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality". This is an absurd provision. The experience in America has been that such a provision can never be a ground for divorce because here you say "guilty of" and not "convicted for this offence", but how is this guilt to be proved? The wife has to prove the guilt of the husband of this offence. As soon as she proves beyond a shadow of doubt, it is taken out from the realm of the civil law to the realm of the criminal law. As soon as this is proved, the State has to interfere. The crime has been proved and therefore, the police must come and arrest those persons and prosecute them under the Indian Penal Code. Where does divorce proceeding lead to? In spite of this provision, the finding of the American sociologists and doctors is that it has never been a ground for divorce. Firstly, it is absurd. Secondly, why make a discrimination? Only except in the case of rape which is peculiarly a male aberration or offence—in the other

[Shri R. N. S. Deo]

...O, what about similar aberrations in the case of females? Why are you excepting them from this ground and not giving reciprocal rights to the husband? Therefore, this is an absurd thing and should be absolutely omitted.

I have also suggested that the proviso to clause 15 should be deleted because that lays down that after the divorce decree has been granted it shall not be allowable for the parties to re-marry within one year. That is justified on the ground of decency—they should not be allowed to marry in indecent haste. What is the definition of 'decent' and 'indecent'? I do not understand. Why should we simply copy the provisions of some other acts.....

Pandit Thakur Das Bhargava: That is *Iddat* of the Mohampadan law.

Shri R. N. S. Deo: May be. But here some of the grounds you are providing for divorce are such that the question of waiting does not at all arise. In these cases and in the other cases also, if you examine them you will see that sufficient time has to elapse before a person can go to a court. It varies from three to seven years and not less than two years in any case. Then there are the proceedings and then there will be a decree. Once you accepted the proposition that in certain cases, though it is not desirable, but as a lesser evil you allow divorce, there is no logical reason why you should restrict re-marriage. Do you expect that all human beings will be saints and that they will have no sexual urges for five to seven years? You expect them to live like saints. That is absolutely an impractical proposition. Rather by having such undue restriction, you will be forcing people to indulge in secret extra-marital relationship or you will be driving them to perversion. From every point of view this is not socially desirable. Therefore, I suggest that we should not simply copy such a provision. There is no logic or reason behind this and this should be deleted.

Shri Tek Chand: I make bold to say that the clauses under discussion are evil in conception, confounding in execution and outrageous in their consequences. The whole Bill is calculated to disrupt society, disintegrate marriage as an institution and it is uncalled for and unwanted and sinful. Hindu society for better or for worse has existed for 5,000 years. We have had our ideals and to the best of our capacity, to the best of our limitations, despite the frailty of human flesh this society has striven as much as it could to live up to those ideals. Pray, we may be weak but do not smash our ideals. Our ideals are strong; they are on a rock. Do not lay your axe on the roots of our ideals. There are those of us who treasure them, who consider them as great moral values and who consider them as great beacon lights—pray do not smash the beacon light; do not extinguish the lamp that guides. But by your statute you have laid your axe against the sturdy oak which has stood many a storm and which has weathered many a thunder and which has given true protection and guidance to your society.

But in view of the limited time at my disposal, I come to the second aspect. I have almost begun to feel that there must be some truth in the sun-spot theory or something about the radio active dust which blinds the mental and moral vision of those from whom we ought to receive some sort of wisdom and some sort of a correct perspective.

Shri S. S. More: There is the Hindu Mahasabha active dust!

Shri Tek Chand: Why is vice being permitted to vanquish virtue, I ask? Why is fickleness favoured whereas virtue and constancy not? What are the laws that we are making? Why are you permitting wickedness to wink at decency? I fail to understand. Nevertheless, when I turn to find the hoary heads, the superannuated senility speaking for divorce, it is something that is incomprehensible to my mind. But when I come to your actual

provisions conceding that divorce is an evil necessity, when I turn to your clauses and subject them to the scrutiny of a lawyer I find them most illogical. It is gratifying for me that the hon. Law Minister is there. Once you grant the right of divorce you are even giving premium to sin. Pray, turn to your clause 13.

Pandit K. C. Sharma: There is no such thing as sin for lawyers. Sentiment and lawyers' logic do not go together.

Shri Tek Chand: I hope the learned interrupter will air his views elsewhere. If you are to allow divorce, what should be the most appropriate cause. The utmost offence is given to the innocent party by adultery on the part of the guilty spouse. But what is your provision? You say '.....the other party is living in adultery'. It is something impossible. The hon. Law Minister understands it far better than I do that the words 'is living in' are in present continuous tense. Therefore, 'is living in adultery' means that there is an existing state of adultery—adultery continuing, going on, persisted in at the precise moment when the petition is made. According to the Indian Divorce Act the provision is that a person is guilty of adultery'. That is the expression. The other laws require that a person 'has committed adultery' but in your case it is 'is living in adultery'. Supposing the aggrieved party comes and says that the guilty party has committed adultery, the court says 'May be, he has committed adultery in the past but he is not living in adultery.' Therefore, there must be a habit of adultery going on and on from day to day. It is then and then alone that the relief is going to be given to the aggrieved party. Provision in your Law should be 'has committed adultery'. Then give relief to the innocent party. It is at least comprehensible and understandable, if you insist on the aggrieved party to prove if adultery was committed once or twice but here the question is: is she or he living actually in adultery? It is impossible under

the present state of society in any country to go on living in adultery. Adultery is a crime which is committed, rarely, occasionally, and secretly. Therefore, this clause, I submit, deserves to be recast in the light of my amendment No. 191.

Then you say under clause 13(ix) a decree of divorce can be given if a party 'has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of the decree.' My amendment No. 192 suggests that after the words 'has failed', you should insert the words 'without reasonable cause'. Otherwise, there may be very good reasons, but the result may be that a divorce must follow. But the most shocking thing, I am afraid, of your Bill, is clause 16 regarding legitimacy. You are fastening the parentage upon a person who can demonstrate to the conviction of any sane-minded person, judge or otherwise, that he was never the father of the child. That is to say, a man lives away, he is abroad for two years, three years and he has never had any access; yet a child born not of his loins but a child begotten by his wife, its parentage is going to be fastened on the husband, a thing unheard of. This is most curious logic. I do not know what influenced the judgment of those who advised when section 16 was being drafted.

Then, again clause 13(2) sub-para (ii) is completely incomprehensible. You say, if a husband has been guilty of rape. But, pray, rape on whom? If the act of rape is on his own wife, even section 376 of the Indian Penal Code does not make it into an offence. The rape on one's wife is no offence unless the wife happens to be below the age of 12. But, here the rape is without saying on whom or whether it is on the other party, which is being made into a ground for divorce where the petitioner happens to be the wife.

Then, kindly see the other two things.....

Pandit K. C. Sharma: There is always an offence.

Shri Tek Chand: Where you bring in the offences of sodomy and bestiality as ground for the case, as the previous speaker said, there is no good ground because, so far as these two acts are concerned, the lady can be equally guilty.

I wish to say a few words on the aspect of the interruptions that were indulged in by two hon. Members on that side. When Shri Tandonji was speaking there was an uncalled for, unnecessary and unwarranted furore on the ground that he seems to have tread on the tender toes of some communities, forgetting that we have not only clause 29(2) wherein the divorce customs of other communities have been left inviolate by this Bill but there is also another clause, clause 2, sub-clause (2) wherein it is stated in so many words that:

"Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs."

Therefore, till then, whatever their laws or customs or usages may be, they are left inviolate. But, pray why single out this Hindu society only for the purpose of inflicting upon it a law of this type which is offensive to them, which has been outraging the feelings of all those people to whom this law is to be made applicable?

Then, my learned friend Mr. Deshpande waxed eloquent.....

Shri V. G. Deshpande: Congress Deshpande.

Mr. Chairman: Please conclude now.

Shri Tek Chand: Very good, Sir. He waxed eloquent. When I examined his arguments, they appeared to be innocent of cogency, innocent of reason. There was plenty of vehemence, but a vehemence which was hardly for a deserving cause.

Shri S. L. Saksena: I want two minutes, Sir.

Mr. Chairman: Two minutes?

Shri V. G. Deshpande: At least he should be given some time, Sir.

Shri Pataskar: I must be given at least half an hour for my reply, Sir.

Mr. Chairman: What will you speak within two minutes, Mr. Saksena?

Shri S. L. Saksena: Sir, I hope the Minister will kindly examine amendment No. 328. I think this amendment should be accepted as a sort of compromise.

You have seen that Acharya Kripalani and Tandonji have said that you should not try to inflict upon women this curse because women are, at present, economically unequal. If the men are given this right to divorce, then, they will divorce whenever they like. So, to protect women, I have given this right to the women. Only wives can go to the court and demand that the marriage should be annulled. She can go and seek a remedy under the law. But, for God's sake, do not give it to husbands. Then, as he said, they will go on divorcing and go in for dowry one after the other as they like.

Secondly, this Bill is only for the benefit of about 20 per cent. It has already been admitted that 80 per cent. come under custom. You are now giving it to the few. You do not want to disturb the personal law of the Muslims, so that they may not be infuriated. You do not want to disturb the personal law of 80 per cent. of the population, who have already got this. You only want to give it to 20 per cent. of the people though they do not demand it. I don't think it should be so; I think it is wrong to inflict this on them.

I have got one thing more. Shrimati Renu Chakravarty quoted hard cases yesterday. In America and in England they are trying to remove this; they are finding ways and means to remove it. As I said, the whole machinery is set to remove this social evil;

they want that divorce should not be there. This should be stopped completely and the best thing is reconciliation. They have got a method of reconciliation; those cases where there is a family disturbance may be reconciled. So, I do hope that as a matter of compromise, the Government will accept my amendment and try to see that the right is given to the women only to have the marriage annulled and not to enforce it upon everybody and let it not be to the husband's benefit.

3 P. M.

Shri Pataskar: I am aware of the deep feelings and sentiments on clause 13 which forms part of this group of clauses, 13 to 18. And, I can assure those hon. Members like our revered Member, Shri Tandonji that I yield to none in my regard for the high ideals of womanhood that have been laid down for centuries by Sita and Savitri. There is absolutely no desire on our part—I can speak for myself—in any way to try and put some other ideal before our people than the ideal of Sita and Savitri. But the question is, as he himself conceded, as to whether the present times do or do not justify something to be done which has been necessitated by the conditions that exist. Before Sita set up that ideal there was Rama who also kept up the tradition of having only one wife. That must always be remembered that there could not have been a Sita without a Rama. Because Rama was an *Ekatpatrivrata*, Sita followed it up. What is our history? Dasaratha did not follow it. So, nobody looks to Dasaratha for an ideal. It was because Rama observed *Ekatpatrivrata*, therefore, you have got the ideal of Sita before you. Therefore, the whole construction is being smashed, not by this Bill but when Rama has developed in a different way. Nobody seems, however to have thought of dealing with that problem when men began to marry more than one wife. When they left the ideal of Rama they tampered with the ideal of Sita. These things happened hundreds of years ago, for causes for which I do not blame any-

body. You cannot have a Sita without a Rama. I hope that this thing will appeal to any one. I yield to none in my admiration for Rama or Sita. But, the surprising thing is that from that time until now, I do not find amongst those who are clamouring for the ancient traditions of Savitri and Sita, anybody bringing forward something to see that we should try to develop Ramas also. That is the trouble. It is not that, because I or this Government or those friends who want to do something to give relief on account of the present conditions, they are all people who do not want to keep up the traditions of highest womanhood. My hon. friend Shri Tek Chand waxed eloquent. I know all that. But, I might tell him that it is hardly possible, when you have tampered with the traditions by introducing Ramas of various types, to come forward and say that only the women should stick to the ideal of Sita. In spite of that, I am saying,—not because I do not want the ideal of Sita to continue, I want it—that something has to be done. I would therefore appeal to the hon. Members to consider this matter a little more dispassionately.

An Hon. Member: Even that Sita was suspected by Rama.

Shri Pataskar: Let us not go by hoary traditions. They are all very good. Even now, it is not that the ideal of Sita and Savitri is not before the classes in which divorce is allowed. The pertinent question at the moment is, we are charged with doing something by introducing divorce in certain cases where there is hardship, and that we are trying to tamper with the ideal of Savitri and Sita. I would only appeal to the Members. I do not like to enter into the question which class is upper or lower. I do not like that. It is ruinous to think in terms of regenerate and non-regenerate classes.

Shri V. G. Deshpande: You must not legislate in those terms.

Shri Pataskar: The fact is that we find that amongst the 80 per cent. of the backward or illiterate or unintelli-

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gent classes, they worship Savitri. On the date of Vata Poornima, in spite of the fact that divorce is allowed amongst them,—I move amongst these people; I have not come from England; I know the traditions here as well as any of my orthodox friends; they will not dare challenge that—along with the women of the so-called higher classes, the women of the so-called lower classes, whom these people are treating with the respect that they should give them,.....

Shri V. G. Deshpande: How do you know that?

Shri Pataskar: It is not by words; but by action.

Shri V. G. Deshpande: You do not know. You treat the womanhood with contempt.

Shri Pataskar: You could have mentioned the fact that they have got this ideal before them. Have you uttered a single word that that 80 per cent. of the people, the so-called un-regenerate classes, in spite of the fact that there is divorce, they are as much devotees of Sita and Savitri and they try to keep up the traditions? My learned friend said that. There are few of the stature of Shri Tandon. He did concede it. I agree with him. So far as the problem of ideal is concerned, it is not mixed up with this matter. It is a question of the way of life that you live. You should not look at this question as if we are trying to do something which will affect the sentimental traditions of 80 per cent. of the people. By the mere fact that there are some provisions for divorce, it is not that the ideal is given up. The word Hindu may be a recent growth. An hon. Member said that Indian culture is 5000 years old. I am as much proud of the Indian culture as anybody else. I think our culture could not be destroyed. If the introduction of divorce by custom amongst 80 per cent. of the people could not destroy Indian culture, simply because we bring the rest also on a par with them by

allowing divorce, I know that it is not likely to be destroyed.

Shri Nand Lal Sharma: By any amount of legislation, you cannot.

Shri Pataskar: Those who want to think only of what is written down in the *Shastras*, may contend otherwise. I have respect for them also but I do not agree with them. They do not like to look at things in the right way. They look differently. They think that because clause 13 is there, the whole of Indian culture and the noble examples of Sita and Savitri are destroyed. That is a wrong approach to the question. We should look at the question from the point of view of the Indian public. As I said, I have also regard for the feeling of those people. When we try to say that by this you are destroying the Indian culture, it is likely to create a sense of some sort of hostility and misunderstanding. So also to say that we are trying to affect the sentiments of the people is not desirable.

The whole point is that we are at the moment trying to bring at least one uniform law for all these people if there are hard cases. It is no good merely relying on the old ideal. We must see the conditions as they are and what has to be done. From that point of view, I would like hon. Members to examine the provisions which have been made here.

What does clause 13 say? It says:

"Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the other ground that the other party—

(i) is living in adultery;"

Should we or should we not allow this? We should allow the marriage to be dissolved in case the other spouse is living in adultery. I was asked, why not make it stringent by saying that a single act of adultery should be a cause for dissolution, I say, we propose to go very cautiously. In the case of

judicial separation, there is a provision made by which for a single act of adultery, the other spouse may be entitled to ask for judicial separation. Why? Because, after judicial separation, there is some time, and during that time, without dissolving the marriage tie on account of a single adultery, we may see if there can be reconciliation. If it is possible, we try not to dissolve the marriage. The provision so far as adultery is concerned is put in such a way that we try to keep the marriage undissolved. It is from that point of view that there is difference made with regard to judicial separation, and dissolution of marriage in regard to adultery. That is the main idea underlying this provision. I believe these are things by which you show the highest regard that you can have for our traditions. If a certain spouse lives in adultery, it is a matter whether we should allow or we should not allow the other side to go and marry somebody else.

The next provision is:

"(ii) has ceased to be a Hindu by conversion to another religion;"

This is a matter about which no exception has been taken. The next provision is:

"(iii) has been incurably of unsound mind for a continuous period of not less than three years immediately preceding the presentation of the petition;"

Is this or is this not desirable? We do not say that as soon as the husband or the wife becomes a lunatic, the wife should divorce the husband or the husband should divorce the wife. We say, let them wait for 3 years. If the unsoundness disappears, the parties may continue. Are we really trying to destroy the sanctity of married life or trying to provide every precaution that we possibly can to see that marriages are not unnecessarily dissolved?

The next provision is:

"(iv) has for a period of not less than three years immediately

preceding the presentation of the petition, been suffering from a virulent and incurable form of leprosy;"

I know there are controversies whether leprosy is curable or incurable, whether it is contagious or not. As I said yesterday, apart from all these matters, we know the way in which we look upon lepers. Every one is afraid of that terrible canker of human society. There is the same safeguard. Not that immediately after the husband or wife becomes a leper, divorce is allowed. We do not say the marriage shall be automatically dissolved. For three years, let him be treated. They will do something. We do not want anybody to run away with the idea that the marriage is being dissolved. There is a period of three years in which many things may happen. But in these days, at least amongst the classes which this is mainly going to affect, normally, instead of joint families, there are the husband and wife living together. They may have some children. And therefore it is thought that in such cases there should be this ground on which they may separate. Even then, the very way in which the provision is framed will show that we are anxious that the marriage should be preserved and not dissolved. Our traditions are such and our married life has developed on such lines that if a husband and wife have lived together for 10 or 12 years, I do believe the man will not immediately, as far as is humanly possible, discard the wife or the wife discard the husband. But if things become impossible, then what is to be done? That is the only point of view from which this provision is made.

Then comes venereal disease. Same thing, and the same arguments will apply. I will not take more time over it.

Then: "has renounced the word by entering any religious order". I think here also we should have no objection. After all, it is married life. If the husband goes away, or the wife becomes a *sanyāsini*, what married

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life can the other spouse follow? And then, what is to be done there? If the husband becomes a *sanyasi*, let him do so. Every one has got freedom these days. (Interruption by Shri Nand Lal Sharma) I do not hear. I do not at all expect to convince my hon. friend. Afterwards he may ask me some questions, but I am convinced that of all people I shall not be able to convince him. So, please allow me to proceed in my own way. You can go your own way.

The next ground is: "has not been heard of as being alive for a period of seven years....." Is it trying to dissolve the marriage and make resorting to divorce an easy move? The wife or the husband has normally to wait for seven years. What more do we want? Is that not a precaution that the marriage persists and that the marriage is not lightly dissolved? Is it not consistent with our ideal?

Then: "has not resumed cohabitation for a space of two years or upwards after the passing of a decree for judicial separation against that party". You are aware that we have passed that clause. There are certain cases for which judicial separation is provided. That is the first step. It is a sort of notice. But if, even after the period of two years, the husband or the wife does not go and live with the other partner, no attempt is made by the one or the other, then why do you want this to continue? That is the way in which this thing has to be looked at.

Then: "has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of the decree". As I said yesterday, I do realise that in these days, the words "restitution of conjugal rights" sound harsh to the ear. In these days of equality between men and women, I can well understand the sentiments of my sisters. But, after all, we know that when people marry, they marry for the sake of each other, and if you are not to drive them to the extremes

of judicial separation or divorce, this is the third method. This is the first step. There is a provision in the Civil Procedure Code which I read out yesterday, and the husband has to pay her maintenance, and if in spite of that that gentleman does not pay or persist in keeping her away, what is she to do? Has she not to have recourse to divorce?

What is there in any of these cases to show that we are treating the marriage tie in a very light manner. I have nothing to do with what the American law says, or what the English law is. I would request the hon. Members to look at what we are doing and find out whether these are not extreme cases, which even reasonable friends like Shri Tandon admitted. I think every reasonable person should approach the question from the point of view from which he has approached it. I have absolutely no difference with him. But this row that is being made by putting certain examples before us and trying to create dust is something which is creating a wrong impression. I know the sentiments of our people. They do want that marriages should be preserved, and we are trying to preserve them. But in the name of sentiment, you cannot for all time continue to do this. This is nothing new also.

Just today a case in Uttar Pradesh was brought to my notice. There, what had happened was that a person was married to a woman and he died. Then, afterwards, according to the custom, probably amongst them, the girl was married to his brother, but the poor girl could not pull on well in the house. She was discarded. This was a case in 1935 in which our venerable colleague, Dr. Katju, was one of the counsels. He brought it to my notice. How long could she remain discarded by the husband, alone? After some time she went and married somebody else and began to live with him. It was good and fortunate, because there was no divorce and she could not go anywhere, she was left in the lurch. She married

somebody and gave birth to a son. Naturally, the question arose whether the son born of her second marriage was legitimate or not, because they said that the first husband was living. Even then, the Judges, because they are also human beings, looking into the facts of the case, laid down at that time, that in the circumstances the second marriage was legal and valid. This is the case of Gopi Krishna Kasundon vs. M. Josso. It is a Privy Council decision. Nobody has raised a voice against it. Do we want that such things should go on and this should always be left to the discretion of the courts from time to time to decide according to the will whether in

particular case the marriage was valid or not. But the simple question is whether we ourselves, as representatives of the people, should today legislate for a thing which we want to make right or not? There may be some lacuna, I do not deny. I will come to that later. But it is wrong to conceive of this Bill as one which has been brought forward to destroy the sanctity of Hindu life, of the marriage tie. No, Sir, I can understand even if, for political reasons, some people might say so, or might, on conviction, differ from it. But let us look at the facts. I would appeal to hon. Members to look at this question with a little less passion and more reason. If we do not legislate, the Judges, as human beings, will legislate in all such cases if the legislature does not legislate. Of course, that would be a boon for people like me, but I do not look at it from that point of view.

Therefore, we have to look at this from this point of view, as to what we have to do today in the present state of society. No doubt, the ancient sages did very well, but who will recognise any such saint today? We might admire them, but when it comes to a little thing, of one being a follower of this particular sect and the other being a follower of that particular sect, then all our ideas of Indian culture vanish into thin air and people begin to be proud and

egoistic of some small little point here and there and they take the country and society to pieces. Therefore I would appeal to you not to mislead the people. On the contrary, let it be your sacred duty to go out and tell the people as to why we have to do it, why it is necessary and what we are doing, and if really our people can convince us that there is some other method by which this problem could be solved, well, there is no harm in considering it, but there is no point in invoking the ancient sages. We all admire them, we are all born out of them. That is not the way to approach it.

Shri Bogawat: Is it not hypocrisy to oppose it simply for political reasons?

Shri Pataskar: I do not want to enter into a controversy. But I suspect at times that it is so.

Shri V. G. Deshpande: Some of the Congressmen are doing it with political motive.

Shri Pataskar: But, as I said, I believe in my integrity and I also believe in the integrity of others.

Shri V. G. Deshpande: Believe in the integrity of other party men also.

Shri Pataskar: Yes. But the way in which other people will judge anybody, I do not know.

So far as I am concerned, I have an open mind, and this is what we are doing by this clause 13. I therefore appeal to hon. Members not only to support this measure, but to consider it as their sacred task and duty, if they really believe in what I have said, to go out and dispel the suspicions of the people and counteract those suspicions. After all, in our country, there are large masses of people who are not capable of realising and understanding this. So many causes are there. Therefore instead of trying to create a row about this simple measure, it should be their sacred duty to go and tell people what we have done, and if there is anything where

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there is something wrong, or there is some lacuna, they may tell me and I am prepared to rectify it. But if they come and say, 'No, such a thing shall not be done', that is another matter. Therefore, that is the utmost that I could do so far as lies in my power to convince them. Of course, there are people who refuse to believe and I cannot hope to convince them.

Then one suggestion was made by Shri Tandon. He asked whether it would be possible to find a way by which we can respect the sentiments of the people and at the same time try to give the relief in a different way. I assure him—because he is the only person who, I think, will believe in my word—that I have examined that question. But the point is that the Special Marriage Act has a history of its own. It developed out of that enactment of 1872 when persons belonging to different regions were to be married. It was primarily for that object, and in the old Hindu Code there was only one section. Somehow or other we thought it better last time to have the Special Marriage Act, to enable people to marry under that Act. Also, I am aware of section 15 of that Act which enables registration of marriages. But it is entirely a different measure, and what we are trying to do here is to make provision only for a particular group of persons, not based on religion, because—I will not again take much of the time—the Jains say theirs is a different religion, the Buddhists say theirs is a different religion; but they have all commonly come to be known as Hindus. We are going to have one uniform law in the Bill for them. Therefore, I do not think it would be right from the legislative point of view to incorporate therein something only about Hindu marriages, when it is a Special Marriage Act meant entirely for a different purpose. If you think that this is not in proper form, I am prepared to consider it, but it must be in this Bill. There the provision is that the two persons must agree before it can be

registered. Very rightly, because when a marriage has taken place according to ancient rights, *saptapadi* or whatever it is, and the two people choose to have another set of rules for inheritance, another set of rules for dissolution and another set of rules for some other purpose, then naturally it must be by mutual consent. It would not be proper to say in that section that anybody after having been married under some different form, should go to the court and say 'No, I do not now want to continue as the husband or the wife under that clause'. To my mind—I have examined it very carefully—that is not the right way to do it, and I think even my lawyer friends will agree with that. If it is done like that, it will change the course of inheritance and so many other things will follow. There are hard cases—even my revered friend, Shri Tandon, realised that there are hard cases—but I think the only way out is to try to preserve the traditions as much as we can. I do not believe in looking at it from the point of view of *unregenerate* and regenerate, but I would like to tell hon. Members that the Sitas and Savitris are not the monopoly of any particular group. If people are cultured and preserve traditions, even in spite of the fact that there is a divorce provision, the ideals of Sitas and Savitris can be maintained. I for one honestly declare here, not as a Minister but as a Hindu, that I have no fear that there will be any tampering with our culture or with our sacred traditions.

With regard to the amendments moved, probably some of my friends would expect some reply. I have already dealt with clause 13. Then come clauses 14 and 15 relating to divorce. That, again, is an indication of our intention:

"When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been

presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again:

Provided that it shall not be lawful for the respective parties to marry again unless at the date of such marriage at least one year has elapsed from the date of the decree in the court of the first instance".

Shri Rane: That is here.

Shri Pataskar: It may be. On the one side there is a tendency to get the marriage dissolved as early as it could be. On the contrary, we are trying to go slow. Therefore, I would say that this is consistent with the ideals which we have got, and therefore, this provision is there. Even after dissolution, sometime should elapse so that the party may consider whether they should or should not again marry. That is why this provision has been made.

With respect to clause 16, my friend, **Shri Tek Chand**, was saying something. But I was hardly able to follow all his loud denunciations and other things. I can assure him—probably he was not here in the morning—that this question of legitimacy is a thing which has to be looked at from a different context in the present state of society from that in which we looked at it in old times. I think it should be the birth-right that every citizen who is born here should have no stigma attached to him on the ground of his father or the mother having married and having done something which was subsequently held illegal.

Shri Tek Chand: Is it 'father or mother' or 'father and mother'? I thought in all logic and fairness it should be 'father and mother'.

Shri Pataskar: So long as he looks at it from a merely legalistic point of view, it is impossible for me to convince him. But let him look around. I do not believe it is a fundamental principle of human conscience that you can brand anybody born of a man and wife as illegitimate. Because he is

born of some parents, what is there? It should be his birthright to be legitimate. There are well established reasons for that. Therefore, as I said in the morning, I am prepared to bring forward a Bill to the effect that no man shall be called or branded as illegitimate.

Shri Tek Chand: Legitimate children of that father, not those of the mother.....

Shri Pataskar: With my limited capacity to convince, I may not be able to convince him.

Then there is the question of punishment. When my hon. friend, **Pandit Thakur Das Bhargava**, spoke, was not here. Clause 18 says:

"Every person who procures a marriage of himself or herself to be solemnized under this Act in contravention of the conditions specified in clauses (iii), (iv), (v) and (vi) of section 5 shall be punishable

(a) in the case of a contravention of the condition specified in clause (iii) of section 5, with simple imprisonment which may extend to fifteen days or with fine which may extend to one thousand rupees, or with both; etc. etc."

Very rightly it was said that this was something which was not the same thing as what is provided in the Child Marriage Restraint Act and so on. Normally, it is better from the point of view of legislation that all the provisions contained in the different Acts in this respect are correlated and are made consistent..

Shri U. M. Trivedi: May I request the hon. Minister to answer the point raised in my amendment No. 353? Why is it that a more severe punishment is not being provided for incest? Why do you want to condone this system of incest?

Shri Venkataraman: That we shall consider when we come to the question of amending the Penal Code.

Shri Pataskar: This is something new which has been raised now. But I was on the point raised by my hon. friend Pandit Thakur Das Bhargava. So far as this matter is concerned, I would only like to say this. This Bill is a part of the original Hindu Code, and it has passed through so many transformations. When you take up measures like this in parts, then naturally I am afraid it happens at times that so much attention may not have been paid to some of the other provisions as should have been. That is quite possible. As I said in the other House when this Bill was being discussed, I shall try to see after all these parts are passed—if at all they are allowed to be passed as parts of the Hindu Code—that they are put together; and then we shall consider all these matters. And at that time, probably much of the opposition that is being voiced now might probably have vanished in thin air—I do not quite know, but that is what my hope is. At that time, we shall see that whatever little adjustments are required as between the different Acts are made, and we shall then consider the suggestions made as to the slight adjustments that may be required. I know my hon. friend Pandit Thakur Das Bhargava agrees with me so far as the principle of the Bill is concerned, and not only that, he is even a greater man because he is the protagonist of the reform in this regard, and he has laboured in that cause very much. I do appreciate that probably there might be some little thing here or there which may need some adjustment, and something may have to be put down in this Bill to adjust it to the other Acts. But let us not do it now. Let us consider it when we put all these parts together. There are other parts also which have to be passed. For instance, the question of dowry was raised yesterday, and I had to say a similar thing in that connection. Naturally therefore every time we are considering these things in parts, that sort of trouble always arises.

Pandit Thakur Das Bhargava: This is the difficulty. The Child Marriage Restraint Act is an all-India measure which applies to all communities, whereas this is a measure which applies to Hindus only. The punishment there is quite different for a Muslim, a Christian, etc. But here the punishment is quite different. Thus the law becomes discriminatory also besides being concurrent with another law.

Shri Pataskar: We shall try to adjust it. I can assure the hon. Member that when we are in a position to put all these parts together, when I hope there will not be that much of opposition which I am seeing today, we shall try to do whatever little adjustments are required and look into all these little things, for only those would be the points left then.

I therefore commend all these clauses for the acceptance of the House.

Mr. Chairman: Now I shall put the amendments and clauses to vote. First, I shall take up the amendments to clause 13.

Shri Nand Lal Sharma: I want amendment No. 416 to be put separately.

Mr. Chairman: That is an amendment which was given notice of only today. It has not been accepted by the hon. Minister. So, under our rules, this amendment cannot be allowed.

Shri V. G. Deshpande: On a point of order. The amendments have been given notice of in a certain order, and they should be put to vote also in the order in which they are placed in the Order Paper.

Mr. Chairman: That is none of his business. I have already asked hon. Members to indicate the numbers of the amendments which they would like me to put separately to the vote of the House, and I have noted down the numbers. If the hon. Member had any amendment to be put separately, he should have indicated to me the numbers.

Shri V. G. Deshpande: I have got amendments Nos. 190 and 376. They should be put separately and read out also to the House. We did not get a chance to speak on them, and the hon. Minister also did not consider them. So they should be read out and then put to vote.

Mr. Chairman: The question is:

In page 8, for clause 13, substitute:

"13. *Unilateral registration of a sacramental marriage under the Special Marriage Act.*—Any marriage solemnized, whether before or after the commencement of this Act, on a petition presented by the wife, to the District Court, may, on the order passed by the Court, be registered under Special Marriage Act on any of the following grounds, namely, the husband—

- (i) has ceased to be a Hindu by conversion to another religion;
- (ii) has not been heard of as being alive for a period of seven years or more by those persons who would have naturally heard of it, had that party been alive.
- (iii) has treated his wife with such cruelty as to cause a reasonable apprehension that it will be harmful for petitioner to live with the other party; and
- (iv) has deserted the petitioner for a continuous period of not less than seven years immediately preceding the presentation of the petition."

The motion was negatived.

Mr. Chairman: The question is:

In page 8, for clause 13, substitute:

"13. *Unilateral registration of a sacramental marriage under the Special Marriage Act, 1954 (43 of 1954).*—Any marriage solemnised, whether before or after the commencement of this Act, on a peti-

tion presented by the wife to the District Court, may, on the order passed by the Court, be registered under the Special Marriage Act 1954, (43 of 1954) on any of the following grounds, namely, that the husband—

- (i) has ceased to be a Hindu by conversion to another religion;
- (ii) is habitually living in adultery;
- (iii) has not been heard of as being alive for a period of seven years or more by those persons who would have naturally heard of it, had that party been alive;
- (iv) has treated his wife with such cruelty as to cause a reasonable apprehension that it will be harmful for petitioner to live with the other party; and
- (v) has deserted the petitioner for a continuous period of not less than seven years immediately preceding the presentation of the petition."

The motion was negatived.

Mr. Chairman: The question is:

In para 8, for clause 13, substitute:

"13. *Divorce.*—Any marriage solemnized, whether before or after the commencement of this Act, may, unilaterally and in the same manner as it was solemnized be dissolved when either party finds it to be of exceptional hardship or of exceptional depravity and as such, intolerable".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, lines 5 to 7, for "on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—" substitute:

"be dissolved either in accordance with the customary law prevailing in the community of the

[Mr. Chairman]

parties to the marriage, or on a petition presented by either the husband or the wife, by a decree of divorce on the ground that the other party—".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, for lines 7 to 41, substitute:

"On the ground that there is sufficient cause considering the way of living, custom and good conscience of the people for such a dissolution".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, omit line 8.

The motion was negatived.

Mr. Chairman: The question is:

In page 8, for line 8, substitute:

"(i) is leading an immoral life; or".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, line 8, omit "living".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, line 8, for "in adultery" substitute:

"an adulterous life".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, for lines 9 and 10 substitute:

"has ceased to follow the religion to which he or she belonged at the time of marriage."

The motion was negatived.

Mr. Chairman: The question is:

In page 8, for lines 9 and 10, substitute:

"(ii) has changed his or her religion and has embraced any

other religion mentioned in subsection (1)(c) of section 2; or".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, line 10, after "religion" add:

"except that of Buddhist, Jain or Sikh religion".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, line 11, for "of unsound mind" substitute:

"mad".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, lines 11 to 13, omit "for a continuous period of not less than three years immediately preceding the presentation of the petition".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, line 12, for "three years" substitute "one year".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, line 12, for "three years" substitute "two years".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, (i) in line 12, for "three years" substitute "five years".

(ii) in line 14, for "three years" substitute "five years"; and

(iii) in line 17, for "three years" substitute "five years".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, omit lines 14 to 16.

The motion was negatived.

Mr. Chairman: The question is:

In page 8, line 14, for "three years" substitute "one year".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, line 14, for "three years" substitute "two years".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, omit lines 17 to 19.

The motion was negatived.

Mr. Chairman: The question is:

In page 8, line 17, for "three years" substitute "two years".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, line 19, after "form" insert:

"to be certified by civil surgeon".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, line 20, after "entering" insert:

" 'sanyasi' life or"

The motion was negatived.

Mr. Chairman: The question is:

In page 8, line 21, after "order" add:

"and that three years have passed since then".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, line 23, for "seven years" substitute "three years".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, line 23, for "seven years" substitute "four years".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, line 23, for "seven years" substitute "five years".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, line 23, for "seven years" substitute "one year".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, line 25, for "two years" substitute "one year".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, line 25, for "two years" substitute "six months".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, after line 27, add:

"Provided this ground shall not apply if the separation has been granted on the ground specified in clause *(g) of sub-section (1) of section 10."

The motion was negatived.

Mr. Chairman: The question is:

In page 8, line 29, for "two years" substitute "one year".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, line 29, for "two years" substitute "six months".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, after line 30, add:

"(x) would not lead a happy married life with the respondent for any just and sufficient cause or ground in the discretion of the court."

The motion was negatived.

Mr. Chairman: The question is:

In page 8, after line 30, insert:

"(x) or, has deserted the petitioner for a continuous period of not less than three years immediately preceding the presentation of the petition."

The motion was negatived.

Mr. Chairman: The question is:

In page 8, (i) line 30, add at the end "or"; and (ii) after line 30, add:

"(x) has deserted the petitioner for a continuous period of not less than five years immediately preceding the presentation of the petition; or

(xi) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the other party, and the petitioner has accordingly lived a separate life for a period of at least five years after such treatment being meted out to the petitioner for the first time."

The motion was negatived.

Mr. Chairman: The question is:

In page 8, omit lines 31 to 41.

The motion was negatived.

Mr. Chairman: The question is:

In page 8, omit lines 40 and 41.

The motion was negatived.

Mr. Chairman: The question is:

In page 8, line 41, omit "or bestiality".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, after line 41, add:

"(iii) that the husband has neglected or has failed to provide for her maintenance after demand for a period of two years or above; or

(iv) that the husband has been sentenced to imprisonment for a period of four years or more if she is below the age of thirty-five years."

The motion was negatived.

Mr. Chairman: The question is:

In page 8, after line 41, add:

"(3) Nothing in this section shall affect the right of the parties to the marriage to dissolve the marriage in accordance with the customary rites of the community to which both of them belong or dissolve it by a duly registered deed of divorce."

The motion was negatived.

Mr. Chairman: The question is:

In page 8, after line 41, add:

"(3) The parties to a marriage may agree in writing to refer their case for dissolution of marriage to an arbitrator or arbitrators appointed by them, and such award, which shall be delivered in writing, shall be legally binding on the parties:

Provided that the wife may, within a period of 3 months from the date of the award, apply to the court having jurisdiction under section 19 for the cancellation of the award on the ground that the agreement to arbitration was obtained by fraud or undue influence, or that the award was unfair and unjust or was delivered without due investigation or without giving her full opportunity for producing evidence. The court shall, after giving the parties full opportunity for producing evidence and also after taking such further evidence as it may deem necessary, confirm the award, or cancel the same and pass such orders as it is empowered to pass under this Act".

The motion was negatived.

Mr. Chairman: The question is:

In page 8, line 41, add:

"(3) The husband and the wife may also jointly present a petition for the dissolution of their marriage by decree of divorce on the ground that they have mutually agreed to dissolve their marriage."

The motion was negatived.

Mr. Chairman: The question is:

In page 8, after line 41, add:

"(3) Any marriage solemnized, whether before or after the commencement of this Act may not, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce if the parties have minor or major child or children."

The motion was negatived.

Mr. Chairman: The question is:

In page 8, after line 41, add:

"(3) The husband and wife may jointly present a petition for the dissolution of their marriage by decree of divorce on the ground that they have mutually agreed to the dissolution of their marriage."

The motion was negatived.

Mr. Chairman: I shall now put clause 13 to vote.

The Lok Sabha divided: Ayes 150; Noes 20.

The question is:

"That clause 13 stand part of the Bill."

Those in favour will say 'Aye', and those against will say 'No'.

Several Hon. Members: Aye.

Some Hon. Members: No.

Mr. Chairman: The 'Ayes' have it, the 'Ayes' have it.

Some Hon. Members: The 'Noes' have it.

Sbri N. C. Chatterjee: This is a clause of fundamental importance and we want a division.

Mr. Chairman: I will ask those in favour to stand up in their seats.

Sbri N. C. Chatterjee: In that case we better discard division altogether. Out of these 415 and odd amendments, we have not divided on a single amendment. This is a very important clause and we want a division.

Division No. 10

AYES

3-40 P.M.

Achal Singh, Seth
Achuthan, Shri
Agarwal, Shri H. L.
Altekar, Shri
Amrit Kaur, Rajkumari
Azad, Maulana
Barupal, Shri P. L.
Basappa, Shri
Basu, Shri K. K.
Bhargava, Pandit Thakur Das
Bhat, Shri C.
Bheekha Bhai, Shri
Biren Dutt, Shri
Bogawat, Shri
Borooh, Shri
Buchhikotiah, Shri
Chakravarty, Shrimati Renu
Chaliha, Shri Bimlaproshad
Chanda, Shri Anil K.
Chandak, Shri
Chandrasekhar, Shrimati
Chatterjee, Shri Tuskar
Chaturvedi, Shri
Chettiar, Shri Nagappa
Chinnaria, Shri
Choudhuri, Shri M. Shafiee
Chowdhury, Shri N. B.
Dabhi, Shri

Das, Shri B. C.
Das, Shri B. K.
Das, Shri Sarangadhar
Dasaratha Deb, Shri
Deo, Shri R. N. S.
Dessai, Shri Khandu Bhai
Deshmukh, Shri C. D.
Deshpande, Shri G. H.
Dhulekar, Shri
Digamber Singh, Shri
Dubey, Shri R. G.
Echaran, Shri I.
Ebeneszer, Dr.
Fotedar, Pandit
Gandhi, Shri M. M.
Ganpati Ram, Shri
Gautam, Shri C. D.
Ghulam Qader, Shri
Gopi Ram, Shri
Gupta, Shri Badshah
Gupta, Shri Sadhan
Gurupadaswamy, Shri M. S.
Hasda, Shri Subhodh
Iqbal Singh, Sardar
Iyyunni, Shri C. R.
Jagjivan Ram, Shri
Jain, Shri A. P.
Jaipal Singh, Shri

Jayashri, Shrimati
Jena, Shri K. C.
Joshi, Shri Jethalal
Joshi, Shri Krishnacharya
Joshi, Shri M. D.
Joshi, Shrimati Subhadra
Kamble, Dr.
Katham, Shri
Katiu, Dr.
Kekar, Dr.
Khardekar, Shri
Khedkar, Shri G. B.
Khongmen, Shrimati
Kripalani, Shrimati Sucheta
Krishna, Shri M. R.
Lakshmayya, Shri
Madiah Gowda, Shri
Majhi, Shri R. C.
Mandal, Dr. P.
Masuodi, Maulana
Matthen, Shri
Mishra, Pandit S. C.
Mishra, Shri S. N.
Mishra, Shri R. D.
Morarka, Shri
More, Shri K. L.
More, Shri S. S.
Mukerjee, Shri H. N.

AYES—contd.

Mukne, Shri Y. M.
 Murti Manohar, Shri
 Muthukrishnan, Shri
 Nair, Shri C. K.
 Nambiar, Shri
 Nanda, Shri
 Narasimhan, Shri C. R.
 Naskar, Shri P. S.
 Notarajan, Shri
 Nehru, Shri Jawaharlal
 Nehru, Shrimati Shrivisva
 Neswi, Shri
 Parikh, Shri S. G.
 Pataskar, Shri
 Pawar, Shri V. P.
 Pillai, Shri Thanu
 Prabhakar, Shri Naval
 Rachiah, Shri N.
 Raghavachari, Shri
 Raghubir Sahai, Shri
 Ram Dass, Shri
 Ram Shankar Lal, Shri

Ramanand Shastri, Swami
 Ramaswamy, Shri P.
 Rane, Shri
 Rao, Dr. Rama
 Rao, Shri K. S.
 Raut, Shri Bhola
 Reddi, Shri B. Y.
 Reddi, Shri Eswara
 Reddy, Shri R. N.
 Rishang Keishing, Shri
 Saba, Shri Meghnad
 Sahu, Shri Bhagbat
 Sahu, Shri Rameshwar
 Saigal, Sardar A. S.
 Satish Chandra, Shri
 Sen, Shrimati Sushama
 Sewal, Shri A. R.
 Shah Nawaz Khan, Shri
 Shriman Narayan, Shri
 Sharma, Pandit Balkrishna
 Sharma, Pandit K. C.
 Sharma, Shri D. C.

Sharma, Shri K. R.
 Sharma, Shri R. C.
 Shivananjappa, Shri
 Shukla, Pandit B.
 Singh, Shri D. N.
 Singh, Shri L. Jogeswar
 Sinha, Shri G. P.
 Sinha, Shri Satyendra Narayan
 Sinhasan Singh, Shri
 Shiva, Dr. Gangadhara
 Snatak, Shri
 Subrahmanyam, Shri T.
 Sunder Lal, Shri
 Suresh Chandra, Dr.
 Suriya Prasad, Shri
 Swami, Shri Sivamurthi
 Thimmaiah, Shri
 Upadhyay, Shri S. D.
 Varma, Shri B. R.
 Venkataraman, Shri
 Vishwanath Prasad, Shri
 Wilson, Shri J. N.

NOES

Chatterjee, Shri N. C.
 Deogam, Shri
 Deshpande, Shri V. G.
 Dube, Shri U. S.
 Hansda, Shri Benjamain
 Hukam Singh, Sardar
 Kirolikar, Shri

Kripalani, Acharya
 Ramnarayan Singh, Babu
 Randeman Singh, Shri
 Rao, Shri P. Subba
 Sakseena, Shri S. L.
 Sharma, Shri Nand Lal
 Shastri, Shri B. D.

Singh, Shri M. N.
 Singh, Shri R. N.
 Tandon, Shri
 Tek Chand, Shri
 Tiwari, Pandit D. N.
 Trivedi, Shri U. M.

The motion was adopted.

Clause 13 was added to the Bill.

Mr. Chairman: I shall now put the amendments to clause 14.

The question is:

In page 8, line 42 and in page 9, wherever they occur in the clause, for "three years" substitute "two years".

The motion was negatived.

Mr. Chairman: The question is:

(i) In page 8, line 42, for "three years" substitute "five years"; and

(ii) In page 9, line 3, for "three years" substitute "five years".

The motion was negatived.

Mr. Chairman: The question is:

In page 9, after line 4, insert:

"Provided that there shall be no bar to such presentation if the ground alleged is as provided in clause (ii) of sub-section (1) of section 13."

The motion was negatived.

Mr. Chairman: The question is:

In page 9, omit lines 5 to 25.

The motion was negatived.

Mr. Chairman: The question is:

In page 9, lines 13 to 15, omit "may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the expiry of three years from the date of the marriage or".

The motion was negatived.

Mr. Chairman: The question is:

In page 9, line 15, for "may" substitute "shall".

The motion was negatived.

Mr. Chairman: The question is:

In page 9, line 25, after "parties" insert "by sending them to an arbitrator."

The motion was negatived.

Mr. Chairman: The question is:

In page 9, line 25, after "parties" insert "by sending them to the gentlemen of the locality who are interested in the welfare of their family."

The motion was negatived.

Mr. Chairman: Now I will put clause 14 to the vote of the House.

The question is:

"That clause 14 stand part of the Bill."

The motion was adopted.

Clause 14 was added to the Bill.

Mr. Chairman: Now amendments regarding new clause 14A. The question is:

In page 9, after line 25, insert:

"14A. No petition for divorce will be presented after the period of ten years of marriage.—Notwithstanding anything contained in this Act it shall not be competent for any Court to entertain any petition for dissolution of a marriage by decree for divorce after the period of ten years from the solemnization of the marriage."

The motion was negatived.

Mr. Chairman: The question is:

In page 9, after line 25, add:

"14A. No petition for divorce after the period of twenty years of marriage.—Notwithstanding anything contained in this Act, it shall not be competent for any

court to entertain any petition for dissolution of a marriage by a decree of divorce after the period of twenty years from the solemnization of the marriage, on any of the following grounds, namely:

- (1) that the other party has been of unsound mind;
- (2) that the other party has treated the petitioner with cruelty;
- (3) that the other party has been suffering from any disease;
- (4) that the other party is impotent."

The motion was negatived.

Mr. Chairman: The question is:

In page 9, after line 25, add:

"14A. No petition for divorce after a period of twenty-five years of marriage and in certain cases.—Notwithstanding anything contained in this Act, it shall not be competent for any court, to entertain any petition for dissolution of marriage by a decree of divorce—

- (i) if a period of twenty-five years has elapsed from the date of the solemnization of the marriage; or
- (ii) the parties have one or more children as a result of their peaceful conjugal life for a period of fifteen years; or
- (iii) in the absence of children the husband is having an age of fifty years and wife, forty-five years on the date of presentation of the petition."

The motion was negatived.

Mr. Chairman: Now amendments to clause 15.

The question is:

In page 9, omit lines 33 to 36.

The motion was negatived.

Mr. Chairman: The question is:

In page 9, line 34, omit "at least".

The motion was negatived.

Mr. Chairman: The question is:

In page 9, lines 34 and 35, for "one year has" substitute "three months have".

The motion was negatived.

Mr. Chairman: The question is:

In page 9, lines 35 and 36, for "from the date of the decree in the court of the first instance" substitute:

"from the date the matter has been finally disposed of by the highest appellate court".

The motion was negatived.

Mr. Chairman: The question is:

In page 9, after line 36, add:

"Provided further that it shall not be lawful for the respective parties to marry again if they have male or female child or children."

The motion was negatived.

Mr. Chairman: The question is:

In page 9, after line 36, add:

"Provided further that it shall not be lawful for the parties who had committed adultery and which adultery was the ground on which the divorce was granted, to marry each other."

The motion was negatived.

Mr. Chairman: The question is:

In page 9, after line 36, add:

"Notwithstanding anything contained herein, where the ground of divorce has been change of religion, the parties may marry at any time after the decree is made final."

The motion was negatived.

Mr. Chairman: Now clause 15.

The question is:

"That clause 15 stand part of the Bill."

The motion was adopted.

Clause 15 was added to the Bill.

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Mr. Chairman: The question is:

"That Clause 16 stand part of the Bill."

The motion was adopted.

Clause 16 was added to the Bill.

Mr. Chairman: There is one amendment to Clause 17.

The question is:

In page 10,
after line 5, add:

"provided that such marriages performed after obtaining permission as specified in Section 18A shall not be void".

The motion was negatived.

Mr. Chairman: The question is:

"That clause 17 stand part of the Bill."

The motion was adopted.

Clause 17 was added to the Bill.

Mr. Chairman: Now amendments to Clause 18.

The question is:

In page 10, line 9,
omit "(iii)"

The motion was negatived.

Mr. Chairman: The question is:

In page 10,
omit lines 11 to 14.

The motion was negatived.

Mr. Chairman: The question is:
In page 10, line 12,
for "clause (iii)" substitute
"clauses (iii) and (viii)".

The motion was negatived.

Mr. Chairman: The question is:
In page 10, line 13,
for "fifteen days" substitute
"three months".

The motion was negatived.

Mr. Chairman: The question is:
In page 10, line 13,
for "fifteen days" substitute
"three months".

The motion was negatived.

Mr. Chairman: The question is:
In page 10, line 16,
for "simple" substitute "rigorous".

The motion was negatived.

Mr. Chairman: The question is:
In page 10, line 17,
for "one month" substitute
"three months."

The motion was negatived.

Mr. Chairman: The question is:
In page 10,
after line 21 add:

"(d) in the case of a contraven-
tion of the condition specified in
clause (vii) of section 5, with
simple imprisonment which may
extend to three months, or with
fine, which may extend to one
thousand rupees, or with both."

The motion was negatived.

Mr. Chairman: The question is:
In page 10, lines 16 and 17,
for "simple imprisonment which
may extend to one month, or"
substitute:

"rigorous imprisonment which
may extend to seven years, and".

The motion was negatived.

Mr. Chairman: Now I will put clause
18 to the vote of the House.

The question is:

"That Clause 18 stand part of
the Bill."

The motion was adopted.

Clause 18 was added to the Bill.

Mr. Chairman: There are some
amendments regarding new Clauses
18A, 18B and 18C.

The question is:

In page 10,

after line 21, insert:

"18A. *Marrying a second wife
during the life-time of former
wife.*—(1) Notwithstanding the
provisions of this Act to the con-
trary, a husband may marry a
second wife during the life-time
of his former wife and such mar-
riage shall not be deemed to be
void or voidable and also punish-
able under sections 494 and 495 of
the Indian Penal Code, 1860
(XLV of 1860):

Provided that the husband
obtains an order in writing per-
mitting him to do so on a petition
to the District Court under sub-
section (2) of this section.

(2) The District Court may
permit a husband to marry an-
other wife during the life-time
of his former wife:

(a) if the former wife—

- (i) has been disabled;
- (ii) has been suffering from a
loathsome disease;
- (iii) has been childless for
fifteen years after marri-
age and consents to such
marriage;

(b) on any just, reasonable and
sufficient ground or cause
in the discretion of the
court;

(3) (a) The court may in the
interest of the former wife, make
any order of maintenance, resi-
dence etc., as a condition prece-
dent or otherwise, in this
proceeding.

[Mr. Chairman]

(b) The order passed under sub-section (3) (a) of this section shall be executable as a decree."

The motion was negatived.

Mr. Chairman: The question is:

In page 10,

after line 21, add:

"18A. (a) It shall not be lawful in a Hindu marriage to offer or accept at any stage of the ceremony any sum exceeding rupees fifty-one or its equivalent as dowry, gift or present except the ceremonial cloths and ornaments to the bride:

(b) Any person contravening the provisions of clause (a) of this section shall be liable to be punished with simple imprisonment for a term not exceeding six months or with fine or with both.

Explanation.—Ceremony referred to in this section includes the sika or tilak ceremony preceding the marriage."

The motion was negatived.

Mr. Chairman: The question is:

In page 10,

after line 21, add:

"18A. *Marrying a second wife during the life-time of former wife.*—(1) Notwithstanding the provisions of this Act to the contrary, a husband may marry a second wife during the life-time of his former wife and such marriage shall not be deemed to be void or voidable or punishable under sections 494 and 495 of the Indian Penal Code, 1860 (XLV of 1860).

Provided that the husband obtains an order in writing permitting him to do so on a petition to the District Court under sub-section (2) of this section.

(2) The District Court may permit a husband to marry another wife during the life-time of his former wife—

(a) if the former wife—

(i) has been physically disabled;

(ii) has been suffering for a period of not less than three years from virulent and incurable form of leprosy;

(iii) has been incurably of unsound mind for a continuous period of not less than three years;

(iv) has been childless for twelve years after marriage and consents to such marriage; and

(b) on any just and reasonable ground or cause in the discretion of the Court;

(3) The court may in the interest of the former wife, make any order regarding her maintenance, residence etc., as a condition precedent or otherwise, in this proceeding.

(4) The order passed under sub-section (3) of this Section shall be executable as a decree."

The motion was negatived.

Mr. Chairman: The question is:

In page 10,

after line 21, insert:

"18A. *Power to issue injunction prohibiting marriage in contravention of this Act.*—(1) Notwithstanding anything to the contrary in this Act, the court may, if satisfied from information laid before it through a complaint or otherwise that a marriage in contravention of the provisions or clauses (iii), (iv), (v) and (vi) of section 5 of this Act, has been arranged or is about to be solemnized, issue an injunction, against any person mentioned in section 18 of this Act, prohibiting such marriage.

(2) The Court may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made under sub-section (1).

(3) Whoever, knowing that an injunction has been issued against him under sub-section (1) of this section disobeys such injunction shall be punished with imprisonment of either description for a term which may extend to three months and with fine which may extend to one thousand rupees.

18B. *Jurisdiction under this Act.*—Notwithstanding anything contained in section 190 of the Code of Criminal Procedure, 1898 (V of 1898), no court other than that of a presidency magistrate or a magistrate of the first class shall take cognizance of, or try, any offence under this Act.

18C. *Mode of taking cognizance of offences.*—No court shall take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed."

The motion was negatived.

Clauses 19 to 23

Mr. Chairman: The House will now take up clauses 19 to 23 for which one hour has been allotted. Hon. Members who wish to move their amendments to these clauses will kindly hand over the numbers of their amendments specifying the clauses to which they relate to the Secretary at the Table within 15 minutes. In the meanwhile we may go on with the discussion.

Pandit Thakur Das Bhargava: Sir, my amendment is number 260 to clause 19, whereby I seek to substitute the words "or the respondent resides or the husband and wife" for the words "or the husband and wife reside or". This is a clause which confers jurisdiction to courts. The wording at present is:

"Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction the marriage was solemnized or the husband and wife reside or last resided together."

The last words are: "original civil jurisdiction the marriage was solemn-

ized or the husband and wife reside or last resided together." I do not object to these words: "where the marriage was solemnized or they last resided together." What I object to is to the words "or the husband and wife reside". My humble submission is this. It may happen that the petition has been brought in court after several years of this solemnization of marriage. It may be after 20 years, 30 years or 5 years; we do not know. The marriage may be solemnized in Calcutta. The parties may have left it and gone to Punjab or somewhere else. So, "where the marriage was solemnized" is really not the right basis on which you can confer jurisdiction, though it may be one of the bases on which you may confer jurisdiction and to which I have no objection.

Then with regard to "last resided together", we do not know after what time this petition shall be brought. After last residing together they might have migrated to some other place. Therefore, I have no quarrel to these words. They may remain as they are.

But I have quarrel with the intermediate words "or the husband and wife reside". Both of them may not be residing at one and the same place. The husband may live at one place and the wife may live at some other place. This has no sense unless both of them reside at the same place. Ordinary rules for conferring jurisdiction is: "where the defendant or the respondent resides". As we are dealing with a case of petition, therefore, I am submitting that instead of the words "or the husband and wife reside" the words "or the respondent resides". My submission is that the principle of section 20 of the Civil Procedure Code is there—where defendant resides, carries on business etc. etc. That is the proper forum. Ordinarily, the principle is that the plaintiff must pursue the defendant. Therefore in the Civil Procedure Code it has been laid down that the proper place of jurisdiction is that the plaintiff must go to the place where the defendant resides and seek jurisdiction there.

Now, since the hon. Law Minister has been pleased to give jurisdiction

[Pandit Thakur Das Bhargava]

in three places with a view to the convenience of parties, I am not touching the other two. What I seek is that the intermediate words be substituted by the words "respondent resides". Then the clause will read thus:

".....original civil jurisdiction the marriage was solemnised or the respondent resides or the husband and wife last resided together."

Therefore, nothing will be lost. On the contrary, you will be putting the right thing according to the principle of Civil Procedure Code. You yourself say in clause 21 that Civil Procedure Code shall apply to the rest of the matters. I do not see why you should not make this change here and make the principle of Civil Procedure Code which is based on experience and convenience, applicable to this case also. You may have the other two parts and substitute the intermediate words with the words I have proposed in my amendment.

Shri Bane: As regards my amendment No. 19 it only seeks to enable a petitioner to present the petition either in person or through a legal practitioner or pleader. Of course, it may be said that there is a provision in the Civil Procedure Code to that effect. But, I do think that our provisions must be self-sufficient to guide any man in the street at least regarding this important Bill.

With regard to my amendment number 20, it seeks to allow a woman petitioner to present her petition to a court within whose jurisdiction the wife ordinarily resides at the time of the petition. My friend Pandit Thakur Das Bhargava had argued otherwise. He wants that a wife should be driven to a court where a husband resides. I think that this is a very hard provision. I came across a case where a girl residing in my town was married to a person in the neighbouring district. But after the marriage he went to Bombay for service. There he got himself entangled in love affair and

married another girl. When the girl wanted under the Bombay Act to present her petition for divorce on the ground that her husband had married another wife during her life-time, the question came whether the girl should go to the High Court of Bombay for presenting her petition. Then the question of expenses came. I went to a Bombay solicitor, through an advocate friend of mine, and asked 'what will be the expenses of this petition?' He said 'it will be five hundred rupees'. For a poor girl from a village or a small town to spend five hundred rupees in order to get a divorce from her husband who was in service in a big city is the greatest hardship for her. The suggestion by Pandit Thakur Das Bhargava may serve as a good instrument in the hands of husbands to harass them. That is why I have tabled this amendment No. 20. I do want that there should be a provision in favour of the wife, rather than in favour of the husband.

As regards my amendment No. 21, it lays down what are the contents of the petition. Clause 20 of the Bill says, "Every petition presented under this Act shall state as distinctly as the nature of the case permits the facts on which the claim to relief is founded and shall also state that there is no collusion etc." The first part of the provision in clause 20 appears to have been taken from the Bombay Act. But in the Bombay Act of Divorce there is provision for rule-making power. Here in this Bill we find that the rule-making power to the Government is absent. There is no such provision. In my opinion this clause is most vague. My amendment is in detail and I think it is very intelligible. Of course, my friend Mr. V. G. Deshpande wanted me to advise the Government to postpone this Bill and he suggested that Government should consult me as their Draftsman. I do not claim to be a Draftsman. I am a humble mofussil lawyer. I do not claim any knowledge of law about drafting.

Mr. Chairman: The hon. Member should expedite his material points.

Shri Rane: My amendment asks the parties to give the accurate or approximate date of marriage, then the duration of residing together after marriage, then the number of children—if they have any—then the social status, the financial status, and then the facts, on which the cause of action is based etc. My amendment No. 21 seeks to substitute another clause for the present clause 20 in the Bill. It is a self-sufficient provision and I do submit there is no harm in accepting this amendment.

Then, as regards my amendment No. 22, it seeks that if the parties to the proceeding come to a settlement the court shall pass a decree in terms of the compromise. We find that the parties, during the proceedings, come to a settlement. Because this is a divorce proceeding, the court may say that this compromise is nothing but a collusion. There are certain provisions in this Bill which provide that if there is collusion the court can dismiss the petition. I do want to maintain that it is in the interests of the parties and the society that if the parties come to a compromise, there shall be a decree according to the terms of the compromise. Besides, it saves the parties from a lot of expenses. We know that litigation in our country is very costly and expensive. And as this measure will affect crores of people it is in the interests of the crores of parties that this provision should be there in the Bill.

Then, as regards my amendment No. 23, it seeks to omit lines 9 to 18 of clause 23. This clause lays down that a court can dismiss a petition on the ground that there was collusion and unnecessary or improper delay. I do not want that these defences should be available to the respondent and that the petition should be dismissed on the ground of collusion or delay.

Shri U. M. Trivedi: Generally Pandit Thakur Das Bhargava is very lucid in his arguments.

Mr. Chairman: The hon. Member may state his own arguments. Otherwise it will only lengthen the debate.

Shri U. M. Trivedi: I have not spoken one word about it. I said that Pandit Thakur Das Bhargava has suggested that the jurisdiction as provided for in clause 19 is divided in three parts. My humble suggestion to him is—and it is very natural the way it has been provided—that it is in two places. Because, the words “husband” and “wife” are joined with the conjunctive “and”; and then afterwards is this disjunctive word “or”. What has been provided is: where the husband and wife reside together or last resided together. So the jurisdiction is given only at two places, either where the marriage is solemnized, or where they actually do reside or where they resided last together. That is the only jurisdiction given. So my submission is that this amendment of Pandit Thakur Das Bhargava should not be accepted.

Then I would like to say a few words about what Shri Rane has suggested on this question of contents and verification of petitions. My submission is this, that so far as verification is concerned we can agree to the verification of plaints. But to put it down further that at the hearing the plaint shall be referred to as evidence will be a very dangerous proposal. Because, after all, the plaints are drafted by advocates. Sometimes advocates use their own knowledge and put down words which they do not explain to the clients at all. That cannot form part of evidence which has not been declared on oath before a Magistrate. It must be explained and must be declared on oath. So we will be unnecessarily going out of our way and putting something more into the petition than it appears. Even in the cases before the Election Tribunal, where the verification was to be made on a declaration before a Magistrate, even in such cases we could not refer to them as a piece of evidence. My submission is that this portion of the clause must be taken out and it should not be taken as a piece of evidence.

[Shri U. M. Trivedi]

When the averment is made only in the plaint, only that degree of sanctity can be attached to it as to any admission or anything of that kind. Verification cannot be a substitute for evidence. At least the meaning of verification under the Civil Procedure Code is not the same as declaration on oath. Declaration is a thing which a man solemnly declares before a court of law or before an officer entitled to receive evidence. In this case he goes and signs a plaint in the presence of his own advocate who has drawn it, and who may have drawn it loosely, and he may be bound down to that. Therefore, my submission would be that this provision should not be accepted.

One thing more and I will sit down. Shri Rane has suggested that in case the parties have come to a compromise, a decree in terms of that compromise must be made. I cannot understand this. There can be a decree only on one cause—decree for separation. The other one will be merely a dismissal. Whenever a conciliation is effected, the parties do not want a decree and there is no question of a compromise being recorded as a decree. Therefore, there is no necessity whatsoever of putting in that amendment.

Shri Raghavachari: My amendment No. 328 is in respect of sub-clause (2) of clause 23. The same matter came up before this House under the Special Marriage Act and then also I moved an amendment to the same effect. Sub-clause (2), as it now stands, makes a sort of a provision for conciliation and I am perfectly aware of the provision that is contained there. I take it that the purpose is that an effort should be made at bringing the parties together by effecting a reconciliation before really a divorce is the ultimate consequence. If really that is the purpose, the clause, in its present form, is not likely to achieve this effect. What has now been stated in the Bill is:

"Before proceeding to grant any relief under this Act, it shall be

the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties."

So much of discretion is given to the court that it can easily brush aside this provision, and the intended efforts to bring about a reconciliation may not be really successful. As you know, the courts that are to deal with these cases under the Act are all civil courts ultimately. We have made provision here that most of the civil courts, namely, the munsiff's court and even the lowest court, will deal with these matters. As at present constituted, most of these district munsiffs are young men, not having much experience. They themselves will probably not realise the complications of the things that come about in life, particularly in married life. They are inexperienced, in addition to having an absence of knowledge of the local conditions. In big States, from one part of the State a man is posted to some other part, and in almost every district customs and conditions are different. Therefore, he is entirely ignorant of the circumstances of the locality and he is a man, sometimes with no knowledge of the language of that region. He is young and inexperienced. The provision that is made almost leaves so much discretion that it is likely that the intended result may not come. Therefore, my proposal is that there should be a board of conciliation consisting of married people of not less than 45 years of age. If the officer is an unmarried person, he may not at times be in a position to appreciate how differences come about between two partners in life. Therefore, I have said that there must be a board of conciliation, which must consist of married persons of more than 45 years of age, one of whom with legal or judicial experience. The board will try to bring about conciliation between the parties within such time as may be granted by the court

and then submit a report to the court. The court, after considering that report, has full discretion to dispose of the case. This will secure the intended result effectively and satisfy rather than leave the whole thing to the inexperienced discretion of even—may be—a bachelor or an unmarried officer, a person who may not know the local conditions, may not know even the language of the place. After all, the purpose is not to bring about separation between the partners, but make them live together. I submit, therefore, that my amendment may be accepted.

Shri Dhulekar: My amendment is No. 79 to clause 23 of the Bill. I have also another amendment seeking to omit lines 15 and 16 on page 11 which pertain to collusion between the parties.

I submit that it is our duty to see that, when judicial proceedings take place and they go on dragging month after month and thousands of rupees are being spent by the parties, there should be at least some provision whereby the parties, when they are exhausted, may come to a compromise and may try to part from each other. Whenever any such compromise is put, the court has always got a right to see whether the compromise has been obtained by fraud or undue influence. Therefore, there can be no objection that if this provision is put in, the parties to the marriage may at any stage of the divorce proceedings present a compromise in writing dissolving the marriage, and a decree for final dissolution of marriage shall be passed by the court. There is ample provision in the Civil Procedure Code, and also, according to the common law, any compromise can be questioned by the court, and, therefore, there need not be any fear that if a compromise is put before the court, the court is bound to accept it. That is not so, but there should be a right that the parties to the proceedings may put in at any stage a compromise so that they may get a final dissolution of their marriage. The court sees whether all the grounds necessary on

which a divorce can be obtained are there. All the evidence has to be produced before the court and then it comes to the conclusion that there are grounds on which dissolution may be granted. This compromise may then be accepted and a final dissolution of marriage may be passed by the court.

Sub-clause (c) states that the petition is not presented or prosecuted in collusion with the respondent. If between a, b, c, d and e, the words were 'or', 'or', 'or', then it would have been something, but everywhere I find the words 'and', 'and', 'and'. In that way, even when all the conditions a, b, c, d and are there, and the court is duly satisfied that all these grounds exist for dissolving the marriage, still if some evidence is put in that the parties have compromised or they are in collusion, the court will not grant the relief. My learned friends who have practised law and have read proceedings of foreign courts will find that in England and other places, there has cropped up a professional class of people who pose as respondents, who pose as witnesses, who get their *mehantana* or fees, who go to the court and give evidence and then a decree is passed. Suppose two persons are living apart. They have not met each other for a long time. Both are not partners in life for a number of years. Any person could come and say that the petition has been filed with collusion and then the court is helpless.

Shri Venkataraman: Mere assertion will not do; it must be proved; proof of collusion must be there.

Shri Dhulekar: As a lawyer I had dealt with cases of Anglo-Indian gentlemen of the G.I.P. railway. Both the parties, husband and wife came to my house and both swore that for a number of years they lived as spouse. They were living in adultery; everybody knows.

Shri Venkataraman: Then they cannot get a divorce.

Shri Dhulekar: Why introduce such things which are only legal fiction?

[Shri Dhulekar]

Why submit our Hindu people to such things? Why ask a wife to put in a written statement. The husband should say falsehood and the wife also should do the same thing. Both the parties should apparently be fighting with all vigour although they know that they are living apart. Therefore, I submit that this provision of collusion is only a back door or rather a front door to fraud, bad proceeding and perjury. These things are going on in foreign countries; lawyers who are practising here know that in other countries there are such provisions. But I do not know how this provision has come there in this Bill. Is it because England and America had adopted, India should also adopt it. I say, Sir, that we are more honourable; we are Hindus. We are free people. Give us the right to part. Give us the right to join. You give us the right to join; give us also the free right to separate. As an hon. Member asked me, why always say that all the dirty linen must be washed in public before a court; why not have some panchayats? I shall appeal to the hon. Law Minister that when the amendments are brought under Clause 23 he may consider this also. These words are here, "whereas it is possible so to do consistently with the nature and circumstances of the case to make every endeavour to bring a reconciliation between the parties"; in this there should be a provision that the Government should have the rule-making power. Simply to put in a pious wish that the judge should do this or that and not give the power to appoint arbitrators or a court of conciliation, will not help. So, I appeal to the hon. Law Minister that he may take into consideration the different clauses. Pandit Thakur Das Bhargava put before him, when he is going to bring the legislation in order to make it consistent. I appeal to him that he should take some rule-making power into the hands of the Government so that these conciliation boards, as Shri Raghavachari and some other hon. Members have also desired, may be there.

Shri Bogawat: Before I say something about my amendment I would like to support Shri Rane and also Shri Dhulekar so far as their amendments are concerned. When we pass any social measure it must be very necessary to remove the hardships so far as our women are concerned. It should not be such as to bring hardship to our women when we want to do them justice. If there is hardship it will be an injustice to them. Under clause 10, if there is sexual intercourse with any person other than his or her spouse, there could be judicial separation. Similarly, under clause 13, if a woman is living in adultery then there can be a divorce. I put to the hon. Law Minister: who will really take advantage of these clauses? Will not a male generally persecute his wife and charge her with this bad act or that and see that the wife is got rid of. It is quite possible. I have given my amendment under section 13 that sub-clause (i) should be omitted. As I had no opportunity, I could not put in my viewpoint. Therefore, I want to request the hon. Law Minister that in such a measure we must think very minutely and in detail and in such a way that no injustice is done to our women.

Similarly here is a word 'cruelty'. There is no definition of the word 'cruelty'. Of course cruelty would be to the woman. There must be some definition; otherwise it would be an encouragement of divorce. We are not here to encourage divorce. It is not our intention to encourage divorce.

Mr. Chairman: These clauses have already been passed.

Shri Bogawat: But I had no opportunity; I wanted to say that it should be omitted.

Mr. Chairman: Let others who have got their amendments speak on their amendments.

Shri Bogawat: I only want to say that there should not be any hardship. Even though the clauses are passed. In spite of the fact that the

clauses had been passed, if there is no amendment, then I can say that there will be no remedy to the children of the persons whose marriages are void. Similarly, in some cases if there are divorces, on account of this sub-clause, there would be injustice to our women. We should see that in future there should not be any hardship to our families. We must read the judgments of the Bombay Courts and the courts in other States also where there are such Acts to see what were the effects and how women were harassed by the husband to be got rid of. Otherwise, there will be no justice. That is my humble request and therefore, I have put in my amendment.

Shri Sadhan Gupta (Calcutta South-East): Sir, I shall confine my remarks only to some aspects of clause 23 to which we have given amendments.

Amendment No. 78 is very simple. By that we want to provide that in the case of advanced stage or pregnancy, the court should adjourn the proceedings till one month after confinement. We do not press it very hard; we just want to focuss attention on such cases because it may be in most cases, the courts will readily grant such adjournments.

Mr. Chairman: That is unnecessary; the court will consider this.

Shri Sadhan Gupta: Regarding amendment No. 77, that is a more vital matter regarding the exception made in the case of condonation in matters of sexual intercourse and cruelty. That may be challenging all the women in our society. Suppose the husband has indulged in sexual intercourse or he has been cruel to her, our amendment No. 77 is so worded as to refer only to sexual intercourse but the same principles apply with greater force in respect of a petition on the ground of cruelty. We say that if the woman has condoned sexual intercourse or has condoned cruelty, she will not have a decree. That is the effect of clause 20. But, looking at our society as it is, are we going to perpetuate a great injustice on women? We know that in our society, the husbands

have a licence and it is not really for our womenfolk to condone or not to condone. The husband may commit a sexual intercourse and then when he comes back the wife has to submit to him in most cases. That is the social position of the wife. Even when the husband is cruel to her, after the cruelty has been perpetrated, it may be that the wife has to submit to him. That is inevitable in the structure of our family, in the structure of our society. And, are we going to penalise the wife for this kind of condonation? If we do it, we shall be depriving many a genuine case of the salutary remedy that this particular Act offers. Therefore, I would urge upon the Minister to omit this reference to condonation in this particular clause or so qualify it that only genuine cases of condonation, only condonations where the woman could do otherwise are covered. Otherwise, there would be great injustice to our womenfolk. Therefore, particularly, in the case of cruelty, I would urge the omission of reference to condonation.

Shri Tek Chand: Sir, I have tabled an amendment seeking the deletion, in clause 22, of the words "if either party so desires or".

Mr. Chairman: I would request the hon. Member to speak on what he wants to move and if the Minister accepts it, then, it can be formally moved.

Shri Pataskar: I do not accept it but it can formally be moved.

Shri Tek Chand: The point is this. The spirit behind clause 22 is that there should not be publicity of certain sordid and debasing and demoralising details which are associated in certain types of divorce cases. With the spirit, everybody must agree but this spirit seems to have been taken to the extreme and the other side of the picture has not been considered. Let us assume that in a divorce proceeding, the conduct of the husband is disgusting and yet he goes about in the society wearing the mask of respectability. After having conducted himself in a manner which,

[Shri Tek Chand]

according to the social standards, is considered disgraceful, he is going to lay his siege on the heart of another woman. The question is, is it not due to society, is it not due to the girl whom he is going to inveigle that people must know what type of man he is, that he is a wolf in sheepskin? Certainly, the next spouse whom he is going to espouse ought to know what type of man he is. Supposing it is a case of gross cruelty, supposing it is a case of certain other aberrations, people must know that he is a social pariah with whom people should have nothing to do. The greatest check, so far as his evil propensity is concerned, is the publicity which is associated with a conduct like this. No doubt, there may be a case where his conduct is really loathsome, where he suffers from certain sexual aberrations of a very morbid and perverse type. In that case, give that right to the court. Because then, this provision would read that if the court so thinks fit to do, let the proceedings be *in camera*. But, what is provided is that "if either party" thinks, that is to say, you are making it common even for the offending party. You let him say, "this is my misconduct but I want it to be screened from public scrutiny." I could have understood if the clause provided that if both parties agree let the thing be *in camera* or the clause could as well have left the matter to the volition or consideration of the court. But, the moment you say, if either party so desires, then you are really giving the guilty party an opportunity, you are presenting him with a mask to wear, a mask of decency and gentility and he can go on in his own way, and the people will always be in doubt whether the innocent party was at fault or the guilty party was at fault. Therefore, the matter has to be left to the court alone, in suitable cases, to prevent the light of the day to scrutinise his evil-doings.

Mr. Chairman: The following are the selected amendments to clauses 19 to 23 of the Hindu Marriage Bill,

which the hon. Members have indicated to be moved subject to their being otherwise admissible:

Clause No.	No. of amendments
19	19, 20.
20	21.
22	407.
New Clause	
22A	22.
23	23, 202, 77, 78, 79, 408, 358.

Clause 19.—(Court to which petition should be made)

Shri Rane: I beg to move:

- (1) In page 10, line 24,
after "presented" insert:
"in person or through pleader
or legal practitioner".
- (2) In page 10,
after line 26, add:

"Provided that if the petitioner is the wife, she may present her petition to the Court within whose jurisdiction, she ordinarily resides at the time of presenting the petition".

Clause 20.—(Contents and verification of petitions)

Shri Rane: I beg to move:

In page 10,

for clause 20, substitute:

"20. Contents and verification of Petitions.—(1) Every petition presented under this Act shall state as distinctly as the nature of the case permits—

- (i) the description of parties viz. full name, age, place of residence, occupation;
- (ii) the accurate or approximate date and year of solemnization of marriage;
- (iii) the duration of residing together of parties after marriage;
- (iv) the number of children, that are living and that have expired and with whom the existing children are living at the time of petition;

- (v) the social status, particularly the financial position, property, income etc. of parties;
 - (vi) the facts on which the claim to relief is founded;
 - (vii) the cause of action and when and where it arose;
 - (viii) relief sought; and
 - (ix) prayer by petitioner.
- (2) the petition shall be verified either by the party or some other competent person on petitioner's behalf as if it were a complaint under the Civil Procedure Code, 1908 (V of 1908)."

Clause 22.—(*Proceedings may be in camera etc.*)

Shri Bibhuti Mishra: I beg to move:

In page 10, line 45,

add at the end:

"and in special cases court is authorised to call any nearest relatives of the parties to watch proceedings of the court in the best interests of the parties"

New Clause 22A

Shri Rane: I beg to move:

In page 11,

after line 3, insert:

"22A. *Petition of compromise.*—If the parties come to a settlement and present a petition of compromise, the court shall record the compromise and pass a decree accordingly, provided that it is not against any law or opposed to public policy."

Clause 23.—(*Decree in proceedings*)

Shri Rane: I beg to move:

In page 11,

omit lines 9 to 18.

Shri Bogawat: I beg to move:

In page 11,

omit lines 9 to 14.

Shrimati Renu Chakravartty: I beg to move:

(1) In page 11, line 12,

omit "or condoned"

(2) In page 11,

after line 20, add:

"(f) where the respondent to the petition under this Act is a woman and at the time of the hearing of the petition she is in an advanced stage of pregnancy the court, shall, if required by the respondent, adjourn the hearing until one month after she is confined."

Shri Dhulekar: I beg to move:

In page 11,

after line 27, add:

"(3) The parties to the marriage may at any stage of the divorce proceeding present a compromise in writing dissolving the marriage, and a decree for final dissolution of marriage shall be passed by the court."

Shri R. N. S. Deo: I beg to move:

In page 11,

omit lines 23 to 27.

Shri Raghavachari: I beg to move:

In page 11,

for lines 23 to 27 substitute:

"(2) The Court shall first refer the matter to a Board of conciliation consisting of at least three married persons of not less than forty-five years of age, one of whom shall be a person of legal or judicial experience. The Board shall try to bring about conciliation between the parties within such time as may be granted by the Court and shall submit a report to the Court recommending the action proposed to be taken in the matter. The Court shall, after duly taking into consideration such report, pass such order or decree as it thinks fit."

Mr. Chairman: All these amendments are now before the House.

श्री विभूति मिश्र : मैं ने क्लॉज २२ पर ऐमेन्डमेंट नं० ४०७ पेश किया है। उसमें यह है कि सारी प्रोसीडिंग्स कमरे के अन्दर होंगी, वहां दूसरा कोई नहीं जाने पायेगा। आज यहां पर यह दिखलाई पड़ता है कि हम उनके हक में कहते हैं कि जब दो आदमी जुदा हों, जब पुरुष और स्त्री का डाइवोर्स होगा तो पुरुष और स्त्री दोनों ही वहां मौजूद रहेंगे, वहां पर और कोई नहीं होगा। मैं कहता हूं कि स्त्री को कोर्ट के सामने अपनी बातें कहने का उतना ज्ञान नहीं होता है जितना कि पुरुष को होता है। इसलिये मैं चाहता हूं कि इसमें कोर्ट को यह अधिकार रहे कि उस स्त्री या पुरुष के किसी सम्बन्ध को वह स्पेशल केसेज में बुलवाये ताकि जिन लोगों को उस स्त्री और पुरुष से कोई इन्टरेस्ट हो उनकी मदद उसको मिल सके। यह इतना सिम्पुल ऐमेन्डमेंट है कि इसको मान लेना चाहिये क्योंकि इस विषय में स्त्री पुरुष दोनों के मामूली हितों का भी स्थल होना चाहिये। मैं समझता हूं कि कितनी ही कोशिश की जाये, अदालत कितना ही न्याय करना चाहे लेकिन पुरुष के मुकाबिले में स्त्री की तरफ उसका झुकाव कम होगा क्योंकि वह अपनी बात ठीक से कह ही नहीं पायेगी। इसलिये मैं समझता हूं कि कोर्ट को अधिकार होना चाहिये अगर पति और पत्नी के कोई नजदीक के रिलेशन हों उनको बुलाकर मुकदमे की सुनवाई करे जिसमें कि दोनों व्यक्तियों के इन्टरेस्ट वाच होते रहें।

मैं चेअरमैन साहब से आग्रह करूंगा कि मिनिस्टर साहब इस बात की तरफ ध्यान दें, यह एक सोशल लेजिस्लेशन है और हिन्दू जाति के जीवन और मरण का प्रश्न है।

Mr. Chairman: Order order; the hon. Member wants to have the attention of the hon. Minister.

श्री विभूति मिश्र : मैं लॉ मिनिस्टर साहब से आपके द्वारा आग्रह करना चाहता हूं कि डाइवोर्स का मामला जो है वह इतना गम्भीर है कि अगर यह होगा कि बन्द कमरे में ही स्त्री और पुरुष को रखा गया जब कि उनके डाइवोर्स का मामला चल रहा हो, तो स्त्री तो अबला जाति है, कमजोर जाति है, आदमी की धूर्तता के आगे उसका बस नहीं चलेगा। इसलिये कोर्ट को यह अधिकार होना चाहिये कि जिसको मुनासिब समझे उस इन्टरेस्टेड सम्बन्धी को मुकदमे की प्रोसीडिंग्स को देखने के लिये बुलाये और उसके सामने कार्रवाई को कराये ताकि यह पता चले कि जिनके लिये कानून बन रहा है उसका फायदा उनको पहुंच रहा है या नहीं। जब पुरुष स्त्री को छोड़ता है तो उसका अधिक नुकसान नहीं होता है, लेकिन स्त्री को तो अपने बाप के यहां जा सकना मशकल होता है। जो कानून आपने बनाया है उसकी व्यावहारिकता मेरी समझ में नहीं आती है, और यह नहीं मालूम होता है कि स्त्री और पुरुष को कोर्ट में क्या हालत होगी।

श्री पाटस्कर : आपका ऐमेन्डमेंट क्या है ?

Shri Tek Chand: He is supporting my amendment:

"and in special cases court is authorised to call any nearest relatives of the parties to watch the proceedings of the court in the best interests of the parties."

श्री विभूति मिश्र : उस औरत के हक में यह निहायत जरूरी है कि उसके इन्टरेस्ट को लुक-आफ्टर करने के लिये उसके नीयरेस्ट रिलेटिव को कोर्ट की प्रोसीडिंग्स देखने के लिये बुलाया जाये। मैं आपको चैलेंज करता हूं कि आप गांवों में चल कर देखिये। अपनी

औरत को छोड़ने पर जिन लोगों का मामला चलता है, जब वे कोर्ट में जाते हैं, तो उनकी औरतें उनके सामने बोल नहीं पातीं। आप जानते हैं कि मरद घूत होते हैं। पुराने समय में तो ऐसा नहीं होता था, परन्तु आज के हाकिम खाने पीने वाले और चाय-पार्टियों में जाने वाले होते हैं। मरद ऐसे लोगों को चाय-पार्टी दे देंगे, कुछ खिला-पिला देंगे और कुछ दे दिला कर अपना काम करा लेंगे। इसलिये इस बात की बड़ी जरूरत है कि कोर्ट को इस बात का अस्तित्व हो कि वह स्पेशल केसेज में नीयरेस्ट रिलेशनज को बुला कर उनके सामने एविडेंस वगैरह ले।

Shri Pataskar: The clauses under discussion are 19 to 23. They relate to jurisdiction and procedure. I would ask all my hon. friends who have made suggestions to look at the matter in a way that I would like them to look at. I know that there may be something which somebody does not like. All the same, let us examine generally whether what we are doing is consistent with the ideology which we are following.

Clause 19 says:

"Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction the marriage was solemnised or....."

My hon. friend Pandit Thakur Das Bhargava raised a point. I know that normally under the provisions of the Civil Procedure Code, the plaintiff has to seek the defendant. If a man has to file a claim or get something from anybody, there are so many courts to which he can go. Normally, if there are no other grounds, he has to seek the defendant. Apart from the cause of action or anything else, he has to file the suit in the place where the defendant resides. Besides, there are places where the cause of action or part of the cause of action arose. In

actions under the Bill, where do we start the proceedings? In the place where the marriage was solemnised. The parties are likely to be there. There are provisions that there will be an attempt at reconciliation. From that point of view, that is the proper place where such proceedings should be filed. I think everyone will agree with this. Then, "or the husband and wife reside". Both of them reside there. From that point of view, that is the right place where such proceedings should start. From the point of view that we do not always want to dissolve marriages, this is the suitable place. Then, "or last resided together". This refers to the place where they resided together last, though they are not there now. The whole idea seems to be that it should be the place where the people concerned know both of them. It is from that point of view probably, that they did not make a provision that it should be filed where the defendant resides. That, to my mind, seems to be the way of their thinking. I do say that the proceedings should be taken where the marriage was solemnised, where the people round about know both the parties or where both of them reside or where both of them resided last. For the time, they may not reside in the same place, but may go to a different place. I think that is the way in which they have thought. After all, I do not think it is necessary to change it now. If any difficulty arises, we will see. The ordinary law that the plaintiff should seek the defendant, may lead to some complications. The other conditions are there. Even if they are there, I am not sure that they would have added to the difficulties. Probably with that idea that it is these places where proceedings should be filed that clause 19 has been framed like this.

Clause 20 relates to contents and verification of petitions. I do not think there is any objection to this. The provision is:

"The statements contained in every petition under this Act shall

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be verified by the petitioner or some other competent person in the manner required by law for the verification of complaints, and may, at the hearing, be referred as evidence."

This has been taken from the provisions in the Divorce Act as it exists. There also, in section 47 it is said:

"The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in the manner required by law for the verification of complaints, and may, at the hearing, be referred to as evidence."

As far as possible, the attempt is to bring this provision in conformity with a similar provision in another Act. It is from that point of view that this wording has been introduced in sub-clause (2). If any hon. Member had any doubt, I hope it is dispelled.

The next clause relates to the application of Act V of 1908. The clause says:

"Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908 (Act V of 1908)."

It is asked, why is not the rule-making power taken by Government and why the power has been given to the High Court. It has been thought much better that in matters of procedure, having laid down the basis of the enactment, for the purpose of carrying out the objective, the High Court may make the rules. Much will depend on the procedure. The High Court has been considered to be the better place to decide which procedure should be applied, and whether any changes are required. No rule-making power has been taken by the Government. The High Court has

been authorised to lay down the procedure to see that whatever we desire may be carried out.

Shri Dhulekar: May I put a question?

Shri Pataskar: I will finish and then if the hon. Member is not satisfied, he may ask and I will answer his question. The objection that my hon. friend Shri Dhulekar pointed out was that there should be a provision to say that if the parties want to come to a compromise, then the matter should not be protracted unnecessarily. After all, the only thing that the court has to see is that under the ruse of a compromise, no undue advantage is taken by either party. That is provided in this clause. What I would like to point out to the hon. Member is that the Civil Procedure Code which we have made applicable, contains a provision with respect to compromise. It is Order 23 Rule 3. Of course, the objective of the hon. Member is laudable. We do not want that parties should be prevented from compromising unless it leads to all sorts of complications. While sympathising with the hon. Member, I would like to point out that the Civil Procedure Code which has been made applicable does leave a margin for any compromise to be effected. If in the actual working, we find that the High Court does not apply these provisions or does nothing under the rule-making powers, we will see. The point which the hon. Member has put forward is a very important matter. I think it is covered. I hope he will be satisfied that so far as we can see, for the present, ample provision has been made for the laudable objective with which he has made this suggestion.

Next, I come to clause 22.

Shri Sinhasan Singh: On a point of information, if the Civil Procedure Code will apply.....

Shri Pataskar: I shall come to questions later. I am being disturbed. I will allow a margin of five minutes for replying to questions. What happens is, if I am disturbed, I lose

the trend of my thought. I would appeal to hon. Members, not from the point of view of any discourtesy, but from this point of view.

Clause 22 says:

"A proceeding under this Act shall be conducted *in camera* if either party so desires or if the court so thinks fit to do, and it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except with the previous permission of the court."

My learned friend Shri Tek Chand said that if the husband is a bad man—I admit the object is laudable—if he is a cruel man, why do you want to give him protection? If the husband is a bad man, it is to the knowledge of the other party, and the wife also may come and say that. Any of them may say. In any way, what would be the result? There would be a judgment. What is the object underlying this clause? We know, adultery and all these things are obscene, which, if allowed to be broadcast will play havoc on young men. If you go to any book-stall in our country,—I do not know about today, I do not go to book stalls—there used to be a large number of books reproducing some American cases or some other cases giving all manner of details, which apart from anything else, produced a very bad effect on young minds. The readers mostly are young people. The whole object underlying this clause is that such proceedings should be conducted *in camera*. What we say is it may be done at the instance of either party or even the court may do it. Saying that it is to give protection to a bad man, I think, is not the right angle to look at it. After all, as I said in the beginning, these cases are to be tried more or less in the place where they resided, and so far as protection to any other woman falling a victim to the man, or any other man falling a victim to the woman who has had very abnormal propensities is concerned, there is the judgment.

5 P.M.

Shri Tek Chand: The Judgment will not be published.

Shri Pataskar: The whole basis will be destroyed by the very proposal that you make. The whole idea is not to serve as an example to others. That may be an indirect purpose. But we do not want the whole society of young people to be the victims of such obscene things being published in the papers.

Shri Tek Chand: May I put a question?

Shri Pataskar: At the end, if necessary.

Regarding sub-clause (2) of clause 22, we find that such proceedings are very wrongly used at times by the press. It is from that point of view, this provision is made.

Clause 23. The very wording of it is very cautious. "If the court is satisfied....." After all, in the case of appointment of guardians, the court has to be very careful.

Shri Rane: Conservative Judges will dismiss the petition.

Shri Pataskar: We expect the Judges also to work in tune with the times and to carry out the purpose of the Act which they administer, and all steps will be taken by the High Court under the rules which they have been empowered to make. After all, we have to trust some machinery. We cannot lay down everything in detail in the legislation itself. If, after all, we find that our intentions are carried out through the High court to provide proper procedure, then we will see what to do. But, for the time being, I think it is a good idea to leave it as it is.

I would say one very good provision is in sub-clause (2), to which I would like to draw the attention of hon. Members, which reads:

"Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first

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instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties."

This again is an indication of our desire to see that marriage ties should not be lightly disturbed as far as possible.

I think these are very simple provisions.

Shri Tek Chand: May I seek one clarification from the hon. Minister? Has the hon. Minister taken into consideration the fact that where the wife happens to be a party and she cannot afford a lawyer, the result will be that if the proceedings are held in camera at the instance of the husband, the wife not being able to afford a lawyer, no relation or friend of her will be able to enter into the court to assist her because it is in camera?

Shri Dhulekar: In camera does not mean that.

Shri Tek Chand: That is exactly what it means.

Shri Pataskar: I do not think the fears of the hon. gentleman are justified. A great responsibility is thrown on the courts. I am sure our courts have played a very important role in the past, they are playing it now, and I have no manner of doubt that our judiciary will try to carry out the intentions of the Act. Not only that. Of course, the hon. Member may not be satisfied, but I am satisfied, and I trust the courts will do it, and if in spite of it something happens, we shall see.

Shri Bibhut Mishra rose—

Shri Pataskar: About the other hon. Member, the less I say the better, because I could not follow what he wanted to say. My trouble is I am not able to follow Hindi properly, though I understand a little of it. I do not know what there is in these clauses which troubles my friend so much,

because he said all persons should be allowed to go to the court.

Mr. Chairman: He wants a relation to accompany.

Shri Pataskar: There is nothing to prevent a court from allowing a relation to come in. I do not know why it is required to be mentioned in the legislation.

My difficulty is that I am not able to understand him, and I fail to convince the hon. Member. He has not much respect for the lawyer class, and that is another trouble. Shall we trust only what we lay down in the legislation, or the courts to carry out the intention?

Mr. Chairman: That was his point.

Shri Tek Chand: I would put one question. Unless and until.....

Mr. Chairman: No argument. You asked a question. He has replied. So, no other question.

Shri Sinhasan Singh: The hon. Minister said that there is a provision in the Civil Procedure Code about compromise, but sub-clause (c) of clause 23 reads:

"the petition is not presented or prosecuted in collusion with the respondent".

Shri Pataskar: Naturally, if it is in collusion, no court will hear it.

Shri Sinhasan Singh: And the petition may be rejected.

Mr. Chairman: It is a matter of argument after all.

Shri Pataskar: If it is collusion, the courts should reject it, but normally if there is no collusion, they come and compromise and do not want evidence for which Shri Dhulekar pleaded, I think the court will allow that compromise.

Shri Tek Chand rose—

Mr. Chairman: No, no. I will not allow any more arguments.

Shri S. S. More: The Law Minister has all along pleaded that there should be no light-hearted or hasty attempt to unloose the marital tie. Sub-clause (d) of clause 23 reads:

"there has not been any unnecessary or improper delay in instituting the proceedings".

It is borrowed from the Divorce Act. But, does it not conflict with the whole trend and spirit of the legislation? Supposing a lady, after waiting for.....

Mr. Chairman: No argument now. You may put the question.

Shri S. S. More: Is it not inconsistent?

Shri Pataskar: On the contrary it is consistent. Supposing a woman or a man goes to court and the act has happened several years back. If they go to court very late, that fact also must be taken into consideration.

Mr. Chairman: I now put the amendments and clauses to the vote of the House:

There are two amendments to clause 19.

The question is:

In page 10, line 24,
after "presented" insert:

"in person or through pleader or legal practitioner".

The motion was negatived.

Mr. Chairman: The question is:

In page 10,
after line 26 add:

"Provided that if the petitioner is the wife, she may present her petition to the Court within whose jurisdiction she ordinarily resides at the time of presenting the petition".

The motion was negatived.

Mr. Chairman: The question is:

"That clause 19 stand part of the Bill."

The motion was adopted.

Clause 19 was added to the Bill.

Mr. Chairman: Now amendment to clause 20.

The question is:

In page 10,

for clause 20, substitute:

"20. Contents and verification of Petitions.—(1) Every petition presented under this Act shall state as distinctly as the nature of the case permits—

- (i) the description of parties viz, full name, age, place of residence, occupation;
- (ii) the accurate or approximate date and year of solemnization of marriage;
- (iii) the duration of residing together of parties after marriage;
- (iv) the number of children, that are living and that have expired and with whom the existing children are living at the time of petition;
- (v) the social status, particularly the financial position, property, income etc. of parties;
- (vi) the facts on which the claim to relief is founded;
- (vii) the cause of action and when and where it arose;
- (viii) relief sought; and
- (ix) prayer by petitioner.

(2) the petition shall be verified either by the party or some other competent person on petitioner's behalf as if it were a complaint under the Civil Procedure Code, 1908 (V of 1908)."

The motion was negatived.

Mr. Chairman: The question is:

"That clause 20 stand part of the Bill."

The motion was adopted.

Clause 20 was added to the Bill.

Mr. Chairman: The question is:

"That clause 21 stand part of the Bill."

The motion was adopted.

Clause 21 was added to the Bill.

Mr. Chairman: Now amendment to clause 22.

The question is:

In page 10, line 45,
add at the end:

"and in special cases court is authorised to call any nearest relatives of the parties to watch proceedings of the court in the best interests of the parties."

The motion was negatived.

Mr. Chairman: The question is:

"That clause 22 stand part of the Bill."

The motion was adopted.

Clause 22 was added to the Bill.

Mr. Chairman: There is one amendment regarding new clause 22A.

The question is:

In page 11,

after line 3, insert:

"22A. Petition of compromise.—If the parties come to a settlement and present a petition of compromise, the court shall record the compromise and pass a decree accordingly, provided that it is not against any law or opposed to public policy."

The motion was negatived.

Mr. Chairman: Now amendments to clause 23.

The question is:

In page 11,

omit lines 9 to 18.

The motion was negatived.

Mr. Chairman: The question is:

In page 11,

omit lines 9 to 14.

The motion was negatived.

Mr. Chairman: The question is:

In page 11, line 12,

omit "or condoned".

The motion was negatived.

Mr. Chairman: The question is:

In page 11,

after line 20, add:

"(f) where the respondent to the petition under this Act is a woman and at the time of the hearing of the petition she is in an advanced stage of pregnancy the court, shall, if required by the respondent, adjourn the hearing until one month after she is confined".

The motion was negatived.

Mr. Chairman: The question is:

In page 11,

after line 27, add:

"(3) The parties to the marriage may at any stage of the divorce proceeding present a compromise in writing dissolving the marriage, and a decree for final dissolution of marriage shall be passed by the court."

The motion was negatived.

Mr. Chairman: The question is:

In page 11,

omit lines 23 to 27.

The motion was negatived.

Mr. Chairman: The question is:

In page 11,

for lines 23 to 27 substitute:

"(2) The Court shall first refer the matter to a Board of conciliation consisting of at least three married persons of not less than forty-five years of age, one of whom shall be a person of legal or judicial experience. The Board shall try to bring about conciliation between the parties within such time as may be granted by

the Court and shall submit a report to the Court recommending the action proposed to be taken in the matter. The Court shall, after duly taking into consideration such report, pass such order or decree as it thinks fit".

The motion was negatived.

Mr. Chairman: Now clause-23.

The question is:

"That clause 23 stand part of the Bill."

The motion was adopted.

Clause 23 was added to the Bill.

Clauses 24 to 28

Mr. Chairman: The House will now take up clauses 24 to 28 for which two hours have been allotted. Hon. Members who wish to move their amendments to this group of clauses will kindly hand over the numbers of their amendments, specifying the clauses to which they relate, at the Table, within 15 minutes. I understand that we have to go on till 6-30 today to make up some time. We lost half an hour because of Questions and an hour before that. Altogether, we are behind by 1½ hours. So if we can expedite it, we can finish it in time; otherwise, we shall have to sit half an hour more.

Pandit Thakur Das Bhargava: Supposing we finish up to clause 28, then we will be within time.

Mr. Chairman: Yes. It comes to this that when we finish clause 28, we will rise.

पंडित ठाकुर दास भार्गव : My amendments are :

(1) In page 11,

(i) line 30, for "either the wife or the husband" substitute "the wife";

(ii) line 30, omit "as the case may be";

(iii) line 31, omit "or his"; and

(iv) line 33, omit "or the husband".

(2) In page 12,

(i) lines 30 and 31, for "at or about the time of marriage" substitute "at the time of marriage";

(ii) line 32, add at the end "or in connection with or on account of marriage".

दफा २४ और २५ दोनों की दोनों इस बिल के अन्दर एक तरीके से एक अजीब तरह की दफायें हैं। उनमें सिर्फ बीवी के लिये ही प्राविजन नहीं है कि बीवी को इस तरह की रियायत मिलेगी और अगर वह ग़रीब हो और उसके पास अपनी सपोर्ट के मीन्स न हों तो खाविद से उसकी मदद करवायी जायगी और जरूरी खर्चा दिलाया जायेगा और उसकी पूरी तरह से मदद की जायेगी, दफा २४ में खाविद साहब को भी बीवी से कुछ मुआ-विजा, कुछ रुपया दिलाने की तजवीज है, उस सूरत में पति को भी कुछ रुपया दिला दिया जाये ताकि वह अपने मुकदमे की पैरवी कर सके और अपना गुजारा कर सके।

उसके बाद इसी तरह दफा २५ में आप देखेंगे कि Permanent alimony and maintenance के सम्बन्ध में भी खाविद और बीवी दोनों को एक स्टेटस में रखा है यानी जैसे कि बीवी को हक हासिल है कि उसके लिये कोर्ट गुजारे और सपोर्ट के लिये एक रकम माहाना या एक मुश्त तजवीज कर दे और जो कि खाविद को देनी पड़ेगी जब तक कि वह अनमैरिड रहती है, उसी तरह खाविद के लिये भी प्राविजन है कि वह बीवी से गुजारा ले सकेगा। मुझे पता नहीं कि यह किस साहब के दिमाग की सूझ थी जो राज्य सभा के अन्दर खाविद को मुआवजा दिलाने की तजवीज पास हुई और मेरे नजदीक तो यह एक बड़ी ही हैरान-कुन और ताज्जुब की चीज है यह तो उसी तरह हुआ कि आज फैंटरी ऐक्ट में लेडीज को जो मेटरनिटी बेंनिफिट्स मिलते हैं,

[पंडित ठाकुर दास भार्गव]

उन मैटरनिटी बैनिफिट्स को मर्दों के वास्ते देने को कहा जाय और मैं समझता हूं सारे का सारा कंट्री उस मांग पर हंसेगा और मजाक उड़ायेगा।

Pandit K. C. Sharma: After ten years, it might be possible. Sex might change.

पंडित ठाकुर दास भार्गव : मैं समझ सकता हूं जो हमारे कृष्णचन्द्र शर्मा चाहते हैं, सेक्स चेंज हो सकता है लेकिन जब तक सेक्स चेंज न हो उस वक्त तक खाविद के वास्ते इस किस्म का मुआविजा दिलाया जाय, यह मजहकाखेज है और अगर यह दफा इसी सूरत में पास हो जाती है तो सारा मुल्क इस पर हंसेगा और समझेगा कि जिन लोगों ने इस दफा को मौजूदा शकल में पास किया है उनको अक्ल नहीं थी कि इस तरह की बाहियात चीज उन्होंने कानून में रखी।

श्री एस० एस० मोरे : सब से ज्यादा भ्रमल है।

[SHERIMATI SUSHAMA SEN in the Chair]

पंडित ठाकुर दास भार्गव : मेरी शिकायत यह है कि आपने लेडीज के फायदे के वास्ते जो यह ला बनाया है, मुझे डर है कि लेडीज को उसका फायदा नहीं पहुंचेगा, क्योंकि मैं जानता हूं कि जो लेडीज साइकौलजिकल बेंसिस पर समझती हैं कि उनको फायदा पहुंचेगा क्योंकि जो अस्तित्वयारात मर्दों को थे, वह हमको भी किस हद तक इस कानून के द्वारा मिल गये हैं लेकिन दरअसल बात यह है कि जैसे हमारे देश के हालात हैं और जो हमारी अब तक की संस्कृति रही है उसके अन्दर हर एक स्त्री अपने खाविद, अपने घर और अपने बच्चों को छोड़ना नहीं चाहती, कोई लेडी डाइवोर्स देना नहीं चाहती मर्द अलवत्ता डाइवोर्स देते हैं।

Pandit K. C. Sharma: Experience is different.

पंडित ठाकुर दास भार्गव : Kindly hear me for a moment.

इससे मर्दों को कोई नुकसान नहीं पहुंचने वाला है, लेडीज को ही नुकसान पहुंचेगा अलवत्ता अगर कभी ऐसा वक्त आ जाय जिसमें लेडीज फ्राइनेंशिएली इंडिपेंडेंट हो जायें और वे इस क्राबिल हो जायें कि वे अपने मुकदमे भी खुद लड़ सकें और अगर उनके खाविद उनको डाइवोर्स कर दें तो उनकी दूसरी शादी हो सके और वे अपनी गुजर खुद कर सकें, तो मैं समझता हूं कि उस हालत में लेडीज को भी फायदा हो सकेगा। लेकिन आज के दिन हम देखते हैं कि हमारे देश में खास तौर पर हिन्दुओं में हालत यह है कि स्त्रियां फ्राइनेंशिएली बिलकुल इंडिपेंडेंट नहीं हैं। मुझे बहुत अफसोस है कि मुझे एक बहुत बड़े बुजुर्ग का इस वक्त इस सिलसिले में नाम लेना पड़ रहा है। मेरा मतलब मनु महाराज से है मैं जानता हूं कि मनु स्मृति में कितनी ही बातें ऐसी लिखी हैं जो एक दूसरे के बरखिलाफ चलती हैं। उसमें तो लिखा बतलाते हैं कि जब तक औरत छोटी उमर की है पिता के मातहत रहे और फिर शादी हो जाने पर जब तक पति जिंदा है तब तक औरत खाविद के जेर असर रहे और पति के मर जाने के बाद अपने बच्चों के जेर असर रहे, गरज यह कि औरत को कभी भी इंडिपेंडेंस नहीं मिल सके मैं समझता हूं कि जो यह बात लिखी हुई है यह बिल्कुल गलत है, मनु स्मृति के अन्दर बाद में हजारों इंटरपुलेशंस हुये हैं। ८०० वर्ष से ज्यादा की आपके पास प्रति नहीं है जो आपके पास पुरानी से पुरानी मनु स्मृति की किताब है वह ८०० वर्ष से ज्यादा की नहीं है लेकिन मैं पूछ सकता हूं कि मनु स्मृति क्या केवल ८०० वर्ष पहले ही लिखी गई थी? उसको तो हजारों वर्ष गुजर गये जब वह लिखी गई थी।

Pandit K. C. Sharma: That was the Roman law.

पंडित शंकर दास भागवत : एक रोमन ला क्या हजारों रोमन ला हों सबका स्रोत हिन्दू लाज हैं, कोई सिस्टम ऐसा नहीं जो हिन्दू सोसाइटी ने तजुर्बान किया हो। पुराने जमाने में भी और आज के दिन भी हर कोई जानता है कि हमारे घरों में बीवियां, माताओं और बहनों के साथ कैसा सलूक किया जाता है, सच तो यह है कि हमारे घरों में जो माता की पूजा होती है, वह पिता की पूजा नहीं होती और हमारे घरों में भाई बहन में जो प्रेम भाव पाया जाता है और एक भाई अपनी बहन से जिस तरह मुहब्बत का बर्ताव करता है, मेरे खयाल में इस तरह के मुहब्बत के ताल्लुक़ात और किसी समाज में मौजूद नहीं हैं, वजहात इसकी कुछ ही हों। मैं इससे इंकार नहीं करता कि आज हम अपनी जगह से गिर गये हैं और हमारा सलूक अपनी बीवियों माताओं और बहनों से जैसा होना चाहिये वैसा नहीं हो रहा है और उसी का नतीजा है कि चूंकि हम अपने आदर्श से गिर गये हैं इसलिये यह कानून लाना पड़ रहा है। लेकिन मैं यह कहे बगैर नहीं रह सकता कि हमारे जितने फेमिली रिलेशंस हैं, वह निहायत ही ऊँचे दर्जे के हैं और मैं समझता हूं कि हमारे अन्दर जो एक प्यूरिटी रही और कलचर रहा वह इस वजह से रहा कि हमारी औरतों ने एक ऐसा स्टैंडर्ड कायम रखा जो उनके शायानेशन था और मुझे यह देख कर अफसोस होता है कि इस तरह का प्राविजन रखे जाने की जरूरत पड़ गयी। मैं उम्मीद नहीं कर सकता कि कभी ऐसा भी मौका आयेगा कि जब कोई औरत किसी मर्द को तलाक देगी तो वह मर्द बेचारा ऐसा गरीब मरा हुआ सा होगा जो यह कहेगा कि मुझे बीबी से मदद दिलवाई जाय और वह मुझे दुष्टारे के लिये मुद्राविज्ञा दे ताकि मैं मुकदमा

लड़ सकूँ और अपनी गुज़र बसर कर सकूँ, मैं तो कहूँगा कि अगर कोई ऐसा मर्द है तो मेरे नजदीक वह मर्द नहीं है बल्कि मरदूद है। बड़े बड़े शहरों जैसे बम्बई, कलकत्ता का और फ़िल्म स्टारों का मुझे तज्जुर्बा नहीं है, लाखों करोड़ों में मुमकिन है इस तरह का केस हो जाय जिसमें किसी बीबी के मुकाबिले में एक आदमी यह उम्मीद रखे कि बीबी से मुझे मदद दिलवाई जाय, और बीबी मेरा गुज़ारा चलायेगी, लेकिन मैं अदब से अर्ज करूँगा कि हमारी सम्यता के अन्दर और जैसी हमारी संस्कृति और रीति रिवाज रहे हैं उनको देखते हुये इस तरह का केस बड़ा ही अजीबो गरीब होगा और जो शायद अपने आप की खुद एक मिसाल होगा। मेरा तो मतालबा है कि हसबेंड के वास्ते इसमें जो मदद का प्राविजन है, वह सारा का सारा उस दफ़ा में से निकाल देना चाहिये उसके अन्दर यह चीज़ नहीं रहनी चाहिये कि हसबेंड को बीबी की तरफ से इस तरह की कोई इमवाद या फ़ाइनेंशियल हेल्प दी जाय।

इसके अलावा दफ़ा २४ और २५ के अन्दर चन्द एक बातें और ऐसी दर्ज हैं जो मेरे नजदीक दरअसल जरूरी नहीं हैं, और बातों के बारे में तो पता नहीं कि मेरे दोस्तों की क्या राय होगी लेकिन जहां तक इस चीज़ का ताल्लुक है मैं समझता हूं कि हाउस इसमें मेरे साथ होगा और मेरी आवाज में अपनी आवाज मिलायेगा और हसबेंड को वाइफ से मदद दिलाने वाले हिस्से को उड़ाने की मांग करेंगे। हमारे ला मिनिस्टर साहब ने जब इसके ऊपर अपनी पिछली तकरीर में जिक्र किया था तो उन्होंने यह फरमाया था कि दूसरे हाउस ने इस चीज़ को इस दफ़ा में रख दिया है और सेलेक्ट कमेटी ने एप्रूव कर दिया है, उन्होंने वजात खुद उसके लिये कोई जिम्मेदारी लेने से इंकार किया और मैं अपने ला मिनिस्टर साहब को बखूबी जानता हूं कि

[पंडित ठाकुर दाम भगवं]

वह अपने दिल में इस तरह के प्राविजन को एक मिनट के वास्ते भी जायज और मुनासिब समझने को तैयार नहीं होंगे और मैं चाहता हूँ कि उस हिस्से को निकाल दिया जाय। दफा २५ में भी मैं समझता हूँ कि यह नुक्स मौजूद है जहाँ कि आप कहते हैं कि औरत जब तक पारसा रहे, जब तक उसका चालचलन ठीक रहे तभी तक वह उस मॅनटेनेंस सपोर्ट की हकदार होगी। मेरा अंदेशा है कि मर्द लोग इसका नाजायज फायदा उठावेंगे और वे झूठी सच्ची शिकायतें और औरतों के बरखिलाफ़ कर देंगे कि वह औरत पारसा नहीं है, या उसका चालचलन खराब है सिवाय इसके कि उस बेचारी औरत की बदनामी हो और उस बेचारी औरत के ऊपर सोर्ड आफ़ डेमोक्रेसीज लटकती रहे, और कोई नतीजा नहीं होने वाला है। कौन शास्त्र बदमाशी करता है या बेइमानी करता है या इसी तरह की कार्यवाही करता है, ये सब सीक्रेट चीज़ें हैं।

लेकिन इल्जाम लगाना बड़ा आसान है और बड़ा आसान हो जायेगा किसी भी औरत के लिये, जिस को यह हक़ मिला है कि उस के खिलाफ़ तरह तरह के इल्जामात लगाये जाय। इस में झूठे इल्जामात लगाने की बड़ी भारी गुंजाइश है। मैं कहता हूँ कि मेरे ऐमेन्डमेंट को आप मानें या न मानें, लेकिन उस पर तबज्जह जरूर दीजिये। मैं नहीं चाहता कि हमारे देश के अन्दर तरह तरह के झूठे सच्चे इल्जामात लगाये जायें और अदालतों को उसे तय करना चाहिये। हम गुजारा दे सकें या न दे सकें, लेकिन इस के क्या माने हैं कि औरत की इज्जत पर हमला किया जाय। मुझे तो यह आइडिया ही रिपब्लिसम मानूम होता है।

अब जो ऐमेन्डमेंट मैं ने दफा २७ पर दिया है उस के बारे में मैं अर्ज करना चाहता हूँ। यह दफा एक तरह से उन चन्द दफात में से है जो आम तौर पर आप ऐसे कानून में नहीं पाते। इस की मुराद यह है कि जब सारे मामलात अदालत के सामने आयें और बीवी और स्त्राविन्द में इस बात का झगड़ा हो कि एक जायदाद जिस के दोनों ज्वायंटली एन्टाइटल्ड हैं और जो शादी के वक्त दी गई, उस पर क्या फैसला किया जाय। मुझे अफ़सोस है कि मैं ने इस भवन में एक ऐमेन्डमेंट राइट्स आफ़ प्रापर्टी के मुतालिक पेश किया था जिस पर गौर नहीं किया गया। मैं जानता था कि उस पर गौर नहीं किया जायेगा। सिर्फ़ एक मेम्बर ने इस की तरफ़ देखा और वह मेरी बहन रेणु चक्रवर्ती थीं। कहा गया कि इस को सक्सेशन बिल में देखा जायेगा। लेकिन मैं जानता हूँ कि उस में इस का निर्णय नहीं दिया जा सकता क्योंकि यह सबाल ज्वायेंट प्रापर्टी का था और वह बिल सक्सेशन का है। मैं देख सकता हूँ कि मैंने जो ऐमेन्डमेंट दिया था कि उस पर फैसला किया जाय, उस पर गवर्नमेंट ने थोड़ी भी तबज्जह नहीं दी और न ही ला मिनिस्टर ने दी। मेरी शिकायत मालूम नहीं बजा है या नहीं लेकिन मैं अर्ज करना चाहता हूँ कि शादी के वक्त जो जायदाद दी जाती है उस का फैसला करने का आप हक़ देते हैं। शादी के वक्त जो जायदाद दी गई उस के दोनों ज्वायेंटली एन्टाइटल्ड होते हैं। फर्ज कीजिये कि एक आदमी की शादी होती है और शादी के बीस बरस के बाद झगड़ा होता है, इस दम्यान में दोनों काफी जायदाद हासिल कर लेते हैं, उसको भी उस में शामिल किया जाना चाहिये था,

क्योंकि जो झगड़ा होता है वह जरूरी तौर पर शादी के ऐन बाद नहीं होता। अगर आप को खयाल हो कि शादी हुई, डाइवोर्स हुआ और झगड़ा तय हो गया, तो ऐसा भ्रामतौर पर नहीं होता। इसलिये मैंने यह तरमीम पेश की है कि जो ज्वारेंट प्रापर्टी है उस का फैसला अदालत को भेजा जाय और सिविल कोर्ट में ही किया जाय। अगर आप समरी पावर्स दे देते हैं कि कोर्ट इस का फैसला कर दे तो कौन सी बीवी को मिलेगी और कौन सी खाबिन्द को मिलेगी। सारी जायदाद का फैसला हो न कि सिर्फ शादी के वक्त दी जाने वाली जायदाद का। मेरी सिर्फ यही तरमीम है और मुझे उम्मीद है कि हाउस उस को मंजूर करेगा।

Shri Bogawat: I have got an amendment No. 206 to clause 25. My hon. friend Pandit Thakur Das Bhargava has said that there should not be any maintenance given to the husband. But I say that if the wife is earning, or she has got property, or she is in some service, then she should grant maintenance to her husband if the husband is in such a state that he is unable to work, he has no property, and he is starving.

Shrimati Sucheta Kripalani (New Delhi): His brother will maintain him; his father will maintain him.

Shri Bogawat: Our women want equal rights. They want divorces. They want monogamy. They want inter-marriages. But they do not want to maintain their husbands, even if they have property and they are earning, in case of divorce.

Mr. Chairman: They have no economic independence. That is why it is so.

Shri N. C. Chatterjee: Now the hon. Member ought to sit down.

Shri Bogawat: If they ask for equal rights, then we must also press for

our rights. It is our duty to press for our rights.

Pandit Thakur Das Bhargava: Are they lunatics or disabled who want it?

Shri Bogawat: We know there are cases where the husband is unable to earn, and he is starving. Will the wife leave him to go to dogs and then have divorce? Is it the intention of my hon. friend and this House to say that a man who is unable to maintain himself because he is in a crippled state should not be granted any maintenance by the wife even when she is earning? It is just possible that the husband might have got into an accident, and his limbs might have been broken, and therefore he might not be in a position to earn his livelihood. Or he may be a leper, and so on. In such circumstances, will it not be the duty of a divorced wife to maintain her husband?

Pandit Thakur Das Bhargava: This is not equality. Then you should say that every person who is not able-bodied should be provided for.

Shri Bogawat: In such circumstances, the husband should be provided for. That is what I have suggested. There may be, and there are hard cases like that. In my amendment, I have suggested that alimony should be granted only in such hard cases, and not in all cases. If you will see the amendment, you will find that I have worded it in a negative form by saying:

"The court may not grant maintenance to a husband unless....."

Pandit Thakur Das Bhargava: This is not equality.

Shri Bogawat: I have in fact started with the words 'The court may not grant maintenance'. I would therefore request hon. Members to take this particular point into consideration.

People are very much for ladies nowadays; they take the ladies' cause generally. I do not dispute that. I am

[Shri Bogawat]

also for that. But do not show injustice against a person who is unable to maintain himself. Supposing the wife has got property or she is earning a salary of, say, Rs. 1000 or Rs. 2000, and is in service, why should she not grant maintenance to her starving husband? That is what my amendment seeks to do.

Shri N. C. Chatterjee: I strongly support the ladies' cause. I think it is repulsive for any husband to ask for alimony *pendente lite* against his wife. I have got here the English law. So far as I know, even in the English law, the husband can never ask for alimony from the wife.

Shri Sinhasan Singh: That is the old law. What is the new law?

Shri N. C. Chatterjee: May I read out to you the relevant portion from the latest book namely *Divorce* by Latey (13th edition), which is the recognised authority on the English law?

"Permanent alimony is the name given to the provision made by order of the court for a wife petitioner after a judicial separation".

So, it is never for a husband petitioner. In fact the very idea of that is so shocking and so revolting that it is not there in the English law. Up to 1857 the ecclesiastical courts had jurisdiction. But from 1857 the High Court of England or the Supreme Court of England got the power. So, from 1857 up till today, for nearly a period of hundred years, nobody has ever heard of it. It is unthinkable; it is revolting; and it is a preposterous suggestion.

With regard to alimony *pendente lite*, the same is the position. The application can only be made by the wife against the husband and not *vice versa*. So far as I know French law, the position is just the same. So far as I know German law, it is just the same. Even in the most progressive countries based on equality, as for

instance, the Soviet Union, they have not got this kind of horrible thing that a husband will say: 'Madam, you have divorced me, but you must go on maintaining me throughout'. If any Hindu husband solemnly asks for alimony, I say he should not be called a Hindu, and he should be thrown out of the Hindu fold altogether.

Pandit K. C. Sharma: He would not be a manly man.

Shri N. C. Chatterjee: It is unthinkable and preposterous. Not only that. I agree with Pandit Thakur Das Bhargava that to some extent clause 25 will encourage people to make imputations against the wife who has been discarded or divorced, so that the alimony provision may be extended. I think this was not in the original Bill.

Pandit Thakur Das Bhargava: No.

Shri N. C. Chatterjee: The word 'alimony' means maintenance given to the wife after the final decree is passed against the husband. If you want to have it the other way, you must change the very concept. There were eight ladies on the Joint Committee and all of them opposed this. This is not equality. This is a parody of equality. This is equality with vengeance. You do not place them on an equal footing so far as the economic status and the financial status are concerned. We know our country; we know our society and therefore it is not proper.

You will make this Bill thoroughly unreal unless and until you accept this suggestion. Mr. Biswas is not here. I am sure if he had been in charge of this Bill when he was in the Joint Committee, he would not have allowed this thing. Unfortunately Mr. Biswas fell ill and Mahopadhyaya knew too much of law. That is the difficulty. What I am saying is that this will make our Parliament a laughing-stock before the people.

I may remind you, alimony is not unknown in India. In the Indian

Divorce Act, the same thing is provided in section 36 and there have been thousands of cases of alimony. The section reads:

"In any suit under the Indian Divorce Act, whether it is instituted by a husband or wife and whether or not she has obtained an order of protection, the wife may present a petition for alimony."

That is the cardinal concept and that concept should be preserved here. It is not found in the American law or in the law of any other civilised country in the world. We have been more progressive than all the progressive countries in the world!

Shrimati Sucheta Kripalani: I have given five amendments to clauses 24 and 25. I do not want to say much because Pandit Thakur Das Bhargava and Mr. N. C. Chatterjee have very eloquently pleaded our cause. I must tell you that this provision that the husband can claim alimony came as a shock to me and to all right-thinking people. This has been put in on the plea of equality. This kind of equality is, to my mind, a monstrous kind of equality. It is not real equality.

Our Indian women were backward; they are still backward. But they are now taking faltering steps towards progress. With very great difficulty, we have introduced this measure because we want to give women some relief. But if in these clauses man is allowed alimony then whatever advantage is sought to be given to the women under this Bill will be negated to a great extent. One has never heard of a wife paying alimony to the husband. As Mr. Chatterjee pointed out, it is not found in the code of any other country. We in India have become so progressive that we want to introduce this kind of equality.

What kind of women will be divorced? An Indian woman very rarely earns; the percentage of such women is very low; then she has no right to

property. Few Indian women have got the education or ability or qualification to earn. It is these women who are going to be divorced. Then again we cannot ignore the social prejudice against divorce. There is a very strong social prejudice against a divorce and a divorced woman will be handicapped in the society. But the same social prejudice will not apply to the husband. Society will accept a divorced husband. But if a woman is divorced, all along there will be some stigma attached to her. Over and above that, we want to add this extra burden. I feel that whatever advantages have been given to the women by this Bill have been taken away by this atrocious clause. I have no other words to describe this, except as monstrous and atrocious.

Let me take the other point to which both Pandit Bhargava and Mr. Chatterjee have drawn our attention. *viz.*, the provision that this alimony may be stopped if the woman has not remained chaste. This is a very vague word. I know of cases where deliberately people have brought this charge of unchastity against women to deprive them of the right to property. We are very sensitive on this point. Women in India have got a very high standard of morality and they are very sensitive when such accusations are made against them. I know of a particular case. There was a lady who was a young widow. Her father-in-law had left his property to her with the proviso that she could enjoy the property only as long as she remained chaste. I do not want to mention her name, but she is a woman for whom I have the highest regard. She has done selfless service and attained a high position in society. But her brother-in-law deliberately brought a case of unchastity against her in order to deprive her of the property. Such cases are not unknown. Therefore, if you have such a provision, it will militate very harshly against women and the very purpose of this enactment will be nullified. I therefore hope that the Law Minister will delete these portions and accept my amendment.

Shri Rane: My amendments are Nos. 117, 120, 124, 125, 126 and 128. Amendments 117 and 120 seek to delete clauses 24 and 25 in the Bill and substitute the clauses as they were in the original Bill of 1952. I do maintain that clauses 24 and 25, as described by my friends, Pandit Bhargava, Mr. Chatterjee and Mrs. Sucheta Kripalani, are monstrous, outrageous and reactionary. I do not want that there should be such a provision in this Bill which would empower the husband to harass the wife. In my opinion, these two provisions would be a good instrument to harass the wives and it will very effectively defeat the very object of the Bill.

Yesterday I expressed the opinion that even the provisions of clauses 12 and 13 are very stringent and whatever relief is given by one hand is taken away by the other. These clauses defeat the very object of those who framed this Bill. The framers of the Bill did not want to defeat the very object of divorce. I will not say much on this point because Mr. Chatterjee himself has pointed out that in no other country in the world is there such a provision for the maintenance of the husband by wife. I even think that it is a matter of shame to the husband that there should be such a provision in this Bill.

As regards my other amendments, they are very simple and speak for themselves. Now, I shall refer to my amendment No. 25. It seeks to insert a new clause 28A and that clause gives the rule-making powers to the Government. I find that the word "prescribed" has been defined in clause 3 of the Bill. The definition runs thus:

" 'prescribed' means prescribed by rules made under this Act; "

I do not know how the Government can make any rules under the Act unless there is a provision for the rule-making powers. I find that such a provision is absent and this word 'prescribed' has no meaning at all.

Pandit Thakur Das Bhargava: The High Court will make rules.

Shri Rane: Under what provisions?

Pandit Thakur Das Bhargava: We have provided for that in one of the clauses.

Shri Venkataraman: Clause 21 provides for the rule-making powers by the High Court.

Pandit Thakur Das Bhargava: Yes.

Shri Rane: Clause 21 says thus:

"Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908 (Act V of 1908)."

Where are the "other provisions"? Of course, I cannot make a meaning out of this. I cannot see how the High Court can make rules under this clause 21.

Pandit Thakur Das Bhargava: The High Court can make provisions for this.

Shri Rane: Under what provision? The clause says:

"Subject to the other provisions contained in this Act."

What are the other provisions contained in this Act?

Shri Pataskar: "And to such rules as the High Court may make in this behalf".

Shri Rane: "All proceedings under this Act shall be regulated". How can you reconcile the word "prescribed" with this? I think that the draftsmen have forgotten to include this about rule-making power clause. That is my reading, because I find that in the Special Marriage Act there is a special section to this effect. Even in the original Code there was such a provision. As the chapter was over, that has been forgotten. That is my reading. Whatever may be the facts

of the case, I do think that my amendment in this respect at least deserves the consideration of the Minister of Law. My other amendments to other clauses of this group are very clear. I do not want to take more time of the House on those amendments.

Shrimati Renu Chakravartty: I would like to support Shrimati Sucheta Kripalani on this clause about alimony. I would like to say that although I do recognise that we are working for the equality of women, let us not legislate for abstract equality without actually giving that equality in all aspects of our life. As I have already stated during the first reading of the Bill, I am prepared to give alimony when the majority of our women are educated and have the ability to earn, and those who are actually working have equality in wages and when the authorities do not have any prejudice against them even when they are in service and also when you give them equal share to property. Even today, when you look at the Succession Bill, what is it that you find? It is a scrap of paper. That is what I feel about it. 80 per cent of the women are going to be excluded from it. What is the use of saying that we are giving equal rights? Firstly you are not giving equal rights. There is no question of equal rights in the share of the property, as you say, and beyond that, you have taken out of the scope of the Bill of Succession the inheritance right for 80 per cent of our women-folk. Until such time as we have equal laws and equal rights, until such time as we are able to earn and have economic independence of the same type as men have in our country, until such time, there can be no question of alimony.

Now, some of our friends say, well, there may be a case of a woman who has a lot of money and why the poor husband should not get a part of it. I want to place before you one point here. One is the case of a husband, a thorough loafer who does not work and who wastes his time and the other case is that of a woman who is a school teacher or school mistress

who earns and keeps the man going. For certain reasons they are divorced. Under these circumstances, the husband will say, well, my wife has a job; she works; she is able to maintain me and therefore the court should give me maintenance.

Shri N. C. Chatterjee: Must.

Shrimati Renu Chakravartty: He says 'must'. I do not know what the interpretation of the court would be, but as per one provision in the clause, he is eligible for the alimony. Therefore, I feel that this is a thing which is not only for big people, big heiresses but also for others, just ordinary people who are struggling to maintain themselves.

The other question of social stigma is also there. It was also pointed out by Shrimati Sucheta Kripalani. I say that there is no question, at this stage of our economic society and of the status of women, of granting alimony also for this purpose. I would urge that this House should throw out this clause. I do not want to raise the point that it happens in no other country in the world. It is true that in Soviet law and in Chinese law, the mother and the father are responsible for the children. If the mother earns then she also has to maintain the child. But there, the conditions are quite different. Everyone has a right to earn and the State guarantees a job there. Is that the situation in our country? There are certain other specific clauses whereby the women's point of view is actually safeguarded there. I do not want to go into the details of those clauses. I would recommend you to read what the various clauses of the Chinese Marriage Act are. Even there, where they have emerged as a feudal right, they have given certain specific clauses whereby the women's interests are protected and the children's interests are protected. Therefore, I do feel that we must do away with this clause and we should not allow this to stay in the statute-book.

Then, I come to the aspect of chastity of the women. I feel equally

[Shrimati Renu Chakravartty]

strong about this clause. I tried my best up to the last and I went on and on hammering that we must delete this clause, this very innocuous-looking clause about alimony being made dependent on the woman being chaste. In our society a woman's chastity is treated just so much as a brittle thing. You know what happens when anybody comes and says, well, this woman is unchaste. You know what society is. When a man has done many things we still accept him in society, but when you give a woman a bad name, what is her position? Therefore, for a divorce it is even worse. People think that when we pass this law, women will rush to the courts for divorce. The biggest tyrant will be the society. The society does not look very kindly upon a divorced woman and the woman who has to stand on her own feet, looking after her children or herself, will have to face the entire society. There will be neighbours and relations who will pick flaws at her and the husband at every stage. Again, there is a very big chance arising this way. Suppose the man has taken another wife. That wife will be out to say, well, let us finish this alimony; why should we go on maintaining another person? Therefore, you are giving a handle to beat the wife with. I would urge upon the Minister of Law who has spoken very sympathetically on these provisions at every stage to remove such a measure. Why is it that you are keeping this clause of chastity and giving a loop-hole? Some of the friends on the other side say, "No, no; we are convinced that this will not militate against the women". I am not a lawyer but just as a person with common sense, knowing our society, I say this. I do not think our judges will be so much above the level of society when interpreting chastity and unchastity. I would say that they will view the attitudes of society, and actually society will not be influenced by the attitudes of people. I should prefer that there should be no loop-hole left in this clause.

The last thing is this. Nobody has talked about it and it is a thing about which I feel very deeply. I have seen cases of that sort. I would urge, as I have urged again and again, the question of the custody of children. When marriage goes wrong, when a woman has to give up her hopes, for whatever it is, it is to the children cling. The majority of them do not go in for divorce up to the last moment because they feel that they may be deprived of their children. Many of my friends who support this Bill and support this clause keep on telling me that we may leave it to the court. A court will certainly decide. It can decide about maintaining children up to 12; I do not think it is up to the age of 15 or 16, but I say, at least upto the age of 12. The mother should be the first to have the custody of the children. I want to bring to your notice a case which I know very well. It is the case of a man of status. He had money. He had made a lot of money during the war, but a man of the lowest morals. He was married to a school teacher. They had a son. The conditions of life in which that girl used to live is something which I, as a woman, will not be able to even utter here. But she did not go for divorce because of this son. For years she remained like that. Many of us told her: "If you have any dignity left in you, go for divorce". She has a right to divorce under the Special Marriage Act. We told her: "If you have any dignity, you cannot live with that man". But she did not. In the end it was impossible for her to live with him and she went for divorce. Because she was only a school mistress, the husband pleaded with the court. The child being the child of a man of social status and the mother not being in an economic position to bring up the child according to that social status, the child was given to the father. What has that woman left in her life? I have seen that woman who weeps even today although it is 4 or 5 years now. That child is not even allowed to go to the mother. I want to urge that at least in the case

where the mother is not insane or the mother is not guilty of immorality, the care of the child should be given to the mother. The court should not be left to decide. The court should give custody of the child, up to the age of 12, to the mother. These are the three things I want to urge.

Shri Venkataraman: Sir, I shall first deal with the points raised by my esteemed friend Shri Rane regarding the rule-making powers. There are only two subjects in respect of which rules can be made in this particular Bill; one relating to the registration of marriages and the other relating to divorce. There are no other clauses in respect of which any rules become necessary.

In respect of registration of marriages the State Government is given powers to make rules. If you will kindly refer to clause 8, you will find: "For the purpose of facilitating the proof of Hindu marriages, the State Government may make rules....."

So far as rules with regard to proceedings in divorce, judicial separation, declaration of nullity and so on, it is not right for the Government to make rules. It is only just and proper that the High Court should make the rules and the High Court is governed by the Civil Procedure Code according to clause 21. Clause 21 enjoins that the procedure prescribed in the Civil Procedure Code shall be followed and they shall be subject to such rules as the High Court may frame. Therefore, I do not think that there has been any omission. What probably agitated my friend was his comparison with the Special Marriage Act. In the Special Marriage Act there are several other matters in respect of which rules have to be framed. For instance, we have a Marriage Registrar and notices have to be given; bans have to be put up; then petitions may be heard and so on. For all these things, rules have to be framed and it has been provided in the Special Marriage Act that rules may be framed by the Government. So, the absence of these rules, I hope,

will not in any way detract the usefulness of this Bill.

Then I come to the next point relating to the custody of children. It is not quite right to imagine that the custody should always be with the mother. There may be cases in which the custody of the child with the mother may prove harmful to the child. Whose sentiments are we respecting? Are we respecting the sentiments of the mother, or the future welfare of the child? If a choice becomes necessary, I would have no hesitation in saying that it is the welfare of the child that has to be looked into and not the sentiments of the mother.

Shrimati Renu Chakravartty: And who would be more careful to do it than the mother?

Shri Venkataraman: I will go a little further. I do not want to offend the susceptibilities of anyone, but I will take instances. Take the case of a woman who is suffering from a venereal disease and who has been divorced on that ground. Would you allow the child to stay with that mother and get the child also infected? You know that venereal disease does not affect merely by cohabitation. There are other forms of infection also—even by wearing clothes, drinking from the same cup and so on. Therefore, it is not right to imagine that the custody of the child should always be with the mother. The circumstances vary in each case and it is for the court, an independent authority, to determine with whom the custody should stay. I have no hesitation in saying that as far as possible courts will give the custody only to the mother because the courts know very well that it is the mother who can take particular care of the welfare of the child. Therefore, normally they would give the custody to the mother only. But, if there are special circumstances which necessitate the diversion of the normal rule, then there should be power with somebody and that somebody will be the court. I hope that, on the whole, this clause relating to the power being granted

[Shri Venkataraman]

to the court has worked very well. I am myself familiar with a few cases in Madras where the question of custody (*Interruption*). I am afraid Shrimati Renu Chakravartty will profit a little by hearing what I say rather than go on nodding her head and commenting.

Shrimati Renu Chakravartty: I want an answer to the case that I placed before.

Shri Venkataraman: One swallow does not make a summer. A single reference to a single case would not be a standard for determination of the general principle. Is it or is it not possible to conceive of cases in which it may be in the interest of the welfare of the child not to give the custody to the mother? If that is so, then it should not be made a rule of law that in all cases the custody should be given to the mother.

Shrimati Renu Chakravartty: I have not said that in all cases the mother should be given the custody. I have said that only in cases where the mother is insane or has been guilty of immorality, only in those two cases the mother should not get custody and in all other cases the mother should be given the custody.

Shri Venkataraman: Who is to judge in each case. Somebody has to judge whether it is fit and proper to give the custody to the mother or somebody else. It is the court that will decide.

Pandit Thakur Das Bhargava: In the Guardian and Wards Act, the principles are the same.

Shri Venkataraman: In the Guardian and Wards Act the court can appoint a fit and proper person to be the guardian. Therefore, I respectfully submit for the consideration of the House and the Members that the provision relating to the custody of children is the best that we can think of under the circumstances.

Then I come to the third question and that is with regard to the payment of alimony by the wife to the

husband. I entirely agree that it is something new. It is found in no other system of law. But, I do not think that this is a matter for such ridicule as my friend Shri N. C. Chatterjee has made it out to be. After all, it has been considered by a Joint Committee. It has been passed by the Rajya Sabha—a House which is as much entitled to pass a Bill as our House.

Shri Nambiar (Mayuram): That does not mean it is ridicule.

Shri Venkataraman: I am personally against any such proposition. But, at the same time I am in favour of getting this Bill passed as early as possible. I am anxious.....

Some Hon. Members: It will be passed.

Shri Venkataraman: Am I not entitled to put forward the reasons, why I say that this clause should be retained as it is? I say, that this Bill, if it is not passed now, will have to go back. I entirely agree with you and it is for you to judge. We will have to go back to Rajya Sabha which has already risen by now. Then the passage of the Bill will be delayed by another 3 or 4 months.

Pandit Thakur Das Bhargava: Let the hon. Minister give an assurance.

Shri Venkataraman: That is what I am saying. That is what I am going to ask. It has been already stated by the hon. Minister that he will bring all the different chapters or Bills relating to Hindu Law into a single Hindu Code. When he brings all these things together into a consolidated law, if he gives an undertaking that he will reconsider this and see that amendments are carried out, then most of us would be satisfied. I strongly urge on the hon. Minister to give an assurance because, I am quite sure, he has himself expressed his views against it. I am well aware of the feelings of the Members of this House in respect of this matter, but as we are anxious to have this Bill passed as early as possible, we will be

content now with an assurance from the hon. Minister.

6 P.M.

Shri Raghavachari rose—

Mr. Chairman: Has the hon. Member any amendment?

Shri Raghavachari: I am opposing this amendment.

Pandit D. N. Tiwary: I move for closure.

Mr. Chairman: There is no question of closure. It has been decided that the House will sit today till 6-30.

Pandit D. N. Tiwary: I move for closure on the consideration of these clauses. Let me give my reasons.

Shri Venkataraman: Madam, on a point of order. When the Business Advisory Committee prescribes a certain time-table for the consideration of the clauses, it is not open to any Member to move for closure because we would then deprive the Members of their right to express themselves.

Pandit Thakur Das Bhargava: Moreover the Chairman is not bound to accept it. It is within the discretion of the Chairman. If a matter has not been fully discussed the Chair can say that the motion need not be put.

Pandit D. N. Tiwary: When the mind of the Government is closed and they are not going to accept any amendment and want to pass this Bill in this session, what is the use of discussing this?

Shrimati Sucheta Kripalani: Even absurd clauses.

Shri Pataskar: May I say a word? This charge that my mind is closed, I strongly refute, from whatever quarter it might come. Every little matter is being thoroughly discussed. Up till now I might not have been able to accept any of the amendments, but the whole thing is being discussed. I refute it, and there is no justification for any such allegation. It is for this House to decide. I strongly oppose the motion. After discussing

this for two hours, if the closure motion is on that ground it deserves to be thrown out.

Pandit D. N. Tiwary: Just now a statement has been made.

Shri Pataskar: I did not make any statement. It is open to any Member to make any statement. I did not.

Pandit D. N. Tiwary: He is also a spokesman of the Government.

Shri Pataskar: You are as good a spokesman of the Government as he is.

Mr. Chairman: Mr. Raghavachari. I would request the hon. Member to be very brief.

Shri Raghavachari: I request the House not to get excited over a matter of this kind.

Shri V. G. Deshpande: Madam, there is no quorum in the House.

Mr. Chairman: There is quorum.

Shri Nambiar: There is enough quorum.

Shri Raghavachari: I was just submitting that the House must not get excited when it is considering a piece of legislation which will affect millions of people, and much less should Members adduce arguments entirely based upon sentiments and appealing to the sense of honour or shame of this or that section of the people.

I have risen to support the Bill as it has come out of the Joint Committee, myself having been a Member thereof. This matter of alimony, custody of children and other matters with which we are now concerned, have been thoroughly discussed and we have arrived at conclusions contained in the report which has come before this House and which, as Shri Venkataraman said, has been even accepted and passed by the House of Elders.

I do not wish to say anything about our own personal inclinations, as to how we might behave in life. I am

[Shri Raghavachari]

now in favour of the Bill as it has come out of the Joint Committee.

I shall first take the arguments of our friends. They have advanced all kinds of sentimental arguments, as they have been doing from the beginning on this Bill, always, on every clause that comes, "it is a shame, it is perverse", this, that and so on, and again quoting "for hundreds of years this law of alimony has stood, why do you change it now?" For thousands of years Hindu law had stood, and you are changing it. Why do you quote precedents, authorities, other countries' experiences, and then say "stop here"?

[PANDIT THAKUR DAS BHARGAVA in the Chair]

We are providing for a case where it must answer the modern and present conditions in which we are busy with this legislation. Though I might be opposing the ladies' section,—and even some of our leaders have taken the other side,—I want definitely to state that there must be one rule. You want equality and in everything. Often our sisters get up any say: "Is this equality? It is equality overdone".

When they adduce these arguments they forget the fact and ignore the language in which the clauses have been clothed. The language simply says: having reference to the capacity and the means of both the person who seeks and the person who has to give. Is it not that you take it for granted that all women in India are economically subordinate, that men in India are economically independent? Where are the grounds for you to accept all these things? There are instances where ladies are economically sound and men are economically unsound. You yourself, Sir, were saying "Is it not a shame for men to expect something at the hands of ladies?" While I personally might not agree to accept anything and might prefer to beg in the streets (Shri S. S. More: Sense of superiority!) now

we are providing legislation and we must make provision for all kinds of things.

I can give you some instances. We find in society young men who sometimes possess nothing. Rich parents-in-law tempt them, offer them all kinds of inducements about future property, this and that, and then the marriage takes place. Later on, after some time, the boy may be rejected on the ground of something. And then he is to be a divorced man. He himself might have his own chances of earning and of being economically sound. But suppose he happens to be a man who was misled into this temptation at one time, and later on, when irritation is felt by the family and he comes to be rejected. Then he becomes economically hopelessly dependent. Would you allow him to go to the dogs?

Shri Nambiar: Why? Let him marry again.

Shri Raghavachari: Mr. Chairman. I do not wish to be interrupted.

Shri S. S. More: My friend is posing two alternatives, either the wife or the dogs. Is this correct?

Shri Nambiar: Too crude.

Shri Raghavachari: Take another case. You are providing a number of reasons for divorce. Some of them might happen to be reasons where the man himself is ill. Let us take the case of an unfortunate visitation of illness of a man who was earning. And now because of his illness he has lost his economic independence. He is also to be divorced. Suppose his wife happens to possess property. Because of this imposed divorce on him he is also to be deprived of the chance of living. It may be a hard case as they say. But they also quote hard cases and say "we want to provide for this". After all, the discretion is vested in the court.

Mr. Chairman: Why should a man be divorced for illness?

Shri Raghavachari: Certainly, there are so many items of illness which bring about divorce.

Mr. Chairman: There are specific diseases.

Shri Raghavachari: I am referring to illnesses that are covered by the grounds for divorce. And then he is in need of real assistance and help, but you are depriving him of that. It is not that in every case where the husband happens to be divorced he has a wife with property whom the court might possibly order to pay. But the question is if there are such instances, why should they be prevented.

The whole question is not simply looking into this matter from sentiment or saying whether a man should ask for maintenance from a woman or that it is a shame or that it is absurd and all that kind of thing. There is nothing of that kind here. You are providing for all sorts of contingencies. Therefore, I am opposed to the change. **Shri Venkataraman** was just suggesting and it also looks to me that some of these friends, who might not have so far bothered about alimony have been very much interested in this now, at least thus to put off the evil day by a few more months. I do not know. I am not attributing any motive, but it is possible there is some such idea in their minds.

I am in favour of amendment No. 362.

श्री बिभूति मिश्र : चैंसरमैन साहब, जिन्होंने ऐमेन्डमेंट्स दिये हैं उन को मौका नहीं दिया जाता है। सेलेक्ट कमेटी के मेम्बरों को तो इसलिये मौका नहीं दिया जाता कि उन को कमेटी में मौका मिल जाता है।

Mr. Chairman: May I just know how the hon. Member would like it if while he was in the course of his speech, the Chair should stop him from speaking on any other amendment? Now, the hon. Member is only speaking on one of the amendments

and how can I check him? However, I would request him to be brief.

Shri Raghavachari: In regard to amendment No. 362, I am inclined to accept it, because the alimony may not be payable to a person who is divorced under those circumstances; then really it is not justifiable.

As regards amendments Nos. 363 and 364, I am stoutly opposed to them. You want to take away even the necessity of conforming to decent habits. A man or a woman gets a divorce and gets the maintenance and then goes on leading any kind of life that he or she loves.

Shrimati Sucheta Kripalani: The hon. Member has not read the amendment carefully. If the person leads an adulterous life, he will not get maintenance.

Shri Raghavachari: Amendment No. 363 relates to omission and only amendment No. 364 wants to substitute "or is leading an adulterous life". There is the question of the necessity of preserving the principle which is even today current under the Hindu Law. Even when maintenance is ordered, a lady who gets her maintenance is bound to keep the bed of her lord unsullied. It is nothing that is newly brought in here; you want to upset the whole thing, get a divorce, get maintenance and keep yourself free to lead any kind of life.

Shrimati Sucheta Kripalani: That is distorting facts.

Shri Raghavachari: Therefore, in regard to amendment No. 361 the equality between man and woman on the question of alimony and maintenance must continue. Amendment No. 362 may be accepted and Nos. 363 and 364 may be rejected.

श्रीमती शिवराजबती नेहरू : मैंने तो पहले ही कहा था कि

Shri C. R. Iyyunni (Trichur): May I just enquire whether such of those Members who have tabled amendments will be given a chance to speak on them or they will be merely allowed to go away?

Shri S. S. More: They will be divorced.

श्रीमती शिवराजवती नेहरू : मैं थोड़ी देर ही बोलूंगी, क्योंकि मेरी दो बहिनें इस विषय में काफ़ी कह चुकी हैं और कहने को बहुत ज्यादा नहीं रह गया है। मैंने पहले भी कहा था कि यह बिल समाज के लिये अत्यन्त लाभकारी है, परन्तु इसके माथे पर एक घन्टा है और वह है स्त्रियों से एलिमनी दिलवाने की क्लाज़ अगर यह क्लाज़ निकाल दी जाये, तो मैं समझती हूँ कि इसकी लाभकारिता और उपयोगिता चौगुनी बढ़ जायेगी। मेरी दोनों बहिनों ने इस क्लाज़ के खिलाफ़ जो कुछ कहा है, उनकी आवाज़ के साथ अपनी आवाज़ मिला कर मैं उसको मज़बूत करना चाहती हूँ। जब कोई बेचारी स्त्री अपने पति को तलाक देना चाहेगी, तो उसके पास कहां से धन आयेगा, जो वह पति को खर्च करने के लिये या रखने के लिये देगी? हमारे देश में अभी स्त्रियों को जायदाद में बराबर का हक मिलता नहीं है और उनके पास आम तौर पर कोई धन नहीं होता है। यह बिल केवल उन थोड़ी सी पढ़ी-लिखी स्त्रियों के लिये नहीं है, जो नौकरी करती हैं या कमाती हैं, बल्कि यह बिल समाज भर की स्त्रियों के लिये, सब बहू-बेटियों के लिये है। इस देश में सब स्त्रियां पैसा नहीं कमाती हैं। यदि कोई स्त्री नौकरी करती भी है—टीचर वगैरह है—, तो उस के लिये तो अपना निर्वाह करना भी मुश्किल होगा। उसके लिये यह कैसे सम्भव होगा कि वह उस पुरुष को मेनटेनेन्स दे, जिसको वह तलाक दे रही है। मैं इस बात को अच्छा समझूंगी कि बजाय इस के कि उस पुरुष का वह स्त्री फलन-मोषण करे, उस पुरुष के भाई, बाप अथवा उसका कुलबा उसको रखे।

हमारे चैटरजी साहब ने कहा कि यह कानून पहले भी था कि स्त्रियां अपने गुजारे के लिये दावा कर सकती थीं। परन्तु होता यह था कि अगर पति पांच हजार कमाता था, तो स्त्री को पचास रुपये गुजारे का हक मिलता था। मुझे मालूम है कि हमारे समाज में ऐसी स्त्री है, जिनके पति डिप्टी कलेक्टर हैं। वह अपनी स्त्री को छोड़ देते हैं और गुजारे का दावा करने पर सिर्फ दस रुपये महीना दिलाया जाता है। जरा ख्याल कीजिये कि आज-कल एक नौकर को भी चार्लस पचास रुपया महीना मिल जाता है, लेकिन स्त्री को सिर्फ दस रुपये दिये जाते हैं। यह तो गुजारे का मजाक उड़ाना है। इतने रुपये को लेकर वह क्या करेगी? इस लिये इन बात का ख्याल रखा जाय कि पात की जितनी तन्स्वाह या आमदनी हो, उसके हिसाब से और हैसियत से स्त्री को गुजारा दिया जाय, ताकि कम से कम वह अपना निर्वाह तो कर सके। यह समझना कि क्या हर्ज है, स्त्रियां कमाती हैं, मैं समझती हूँ कि पौरुष के खिलाफ़ है। हमारे समाज की यह आदत है कि वह किसी न किसी अंग को दास बनाये रखना चाहता है। यदि आज स्त्री ऊपर उठ रही है और मुक्त होना चाहती है, तो पुरुष चाहते हैं कि हम ही दास हो कर रह जायें। मुझे तो यह बात अलाभकारी मालूम होती है। इस से हमारे समाज को बहुत ही नुकसान पहुंचेगा और पुरुष के पौरुष और मान-मर्यादा में फर्क आयेगा।

मेरी बहिन ने यह भी कहा कि जब हमारी स्त्रियां अलाहिदा कर दी जाती हैं, जब उनके पति उन को छोड़ देते हैं, तो भी वे इस डर के मारे किसी न किसी तरह गुजारा करती रहती हैं कि उन के बच्चे

उन से छीन लिये जायेंगे, और वे सब तरह के कष्ट उठा कर और बे-इज्जती सह कर भी गुजारा करती हैं। मुझे पता है कि एक स्त्री को उसका पति रोज पीटता था। उसके मां-बाप ने कहा कि उसको छोड़ दो, परन्तु उस स्त्री ने कहा कि मैं नहीं छोड़ूंगी, क्योंकि ऐसा करने से मेरा बच्चा मुझ से छूट जायगा। बहुत दफा ऐसा होता है। अभी हमारे समाज में एक स्त्री है, जिसके बच्चों को उस से छीन लिया गया है और पति ने उसका निकाल दिया है। उसकी सिर्फ एक ही लड़की है, जिसकी आज शादी हो रही है, लेकिन उस स्त्री को उसमें नहीं बुलाया गया। वह तड़पती है कि उसकी इकलौती लड़की की शादी हो रही है और वह वहां नहीं जा सकती। मांभों से ज्यादा कोई अपने बच्चे को प्रेम नहीं कर सकता है। अगर पिता को बच्चों को रखने का अस्तिवार दिया जाये, तो भी वह स्वयं नहीं रखेगा, बल्कि किसी दूसरी स्त्री—नानी या दादी—को दे देगा, लेकिन मां से ज्यादा बच्चे का कोई हितकारी नहीं हो सकता है। इस लिये यह जरूरी है कि जब तक बच्चा बारह बरस का न हो जाय, तब तक वह मां की कस्टडी में रहे।

इन शब्दों के साथ मैं इन दोनों बहिनों को सपोर्ट करती हूँ।

Mr. Chairman: The following are the selected amendments to clauses 24 to 28 of the Hindu Marriage Bill, which the hon. Members have indicated to be moved subject to their being otherwise admissible:

Clause No.	No. of Amendments
24	117, 119, 203, 80, 251, 359.
2	120, 81, 166, 204, 361, 362, 167, 205, 82, 363, 83, 364, 205, 122.
2	84

New Clause 26A	409.
28	24, 124.
New Clause 28A	25.

Clause 24.—(Maintenance pendente lite etc.)

Shri Bane: I beg to move:

In page 11,

for Clause 24, substitute:

"24. *Maintenance pendente lite and expenses of Proceedings*.—(1) Where in any proceeding under this Act, it appears to the Court that the wife has no independent income sufficient for her support and the necessary expenses of the proceedings, it may, on the application of the wife, order the husband to pay to her the expenses of the proceedings and monthly during the proceeding such sum as having regard to the husband's income it may seem to the court to be reasonable and adequate.

(2) This order shall not be appealable."

Shri Sadhan Gupta: I beg to move:

In page 11,

for clause 24, substitute:

"24. *Maintenance pendente lite and expenses of proceedings*.—Where in any proceeding under this Act it appears to the court that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding, it may, on the application of the wife order the husband to pay to the wife the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the wife's own income and the income of the husband, it may seem to the court to be reasonable."

Pandit K. C. Sharma: I beg to move:

In page 11,

for clause 24, substitute:

"24. *Maintenance pendente lite and expenses of proceedings*.—Where in any proceeding under

[Pandit K. C. Sharma]

this Act it appears to the court that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding, it may, on the application of the wife, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent it may seem to the court to be reasonable."

Shrimati Renu Chakravartty: I beg to move:

In page 11,

(i) in line 30,

for "either the wife or the husband, as the case may be," substitute "the wife"

(ii) in line 31,

omit "or his"

(iii) in line 33,

omit "or the husband".

Pandit Thakur Das Bhargava: I beg to move:

in page 11,

(i) line 30, for "either the wife or the husband", substitute "the wife";

(ii) line 30, omit "as the case may be";

(iii) line 31, omit "or his"; and

(iv) line 33, omit "or the husband".

Shrimati Sucheta Kripalani: I beg to move:

In page 11,

(i) in line 30,

for "either the wife or the husband, as the case may be," substitute "the wife";

(ii) in line 31,

omit "or his"; and

(iii) in line 33,

omit "or the husband".

Clause 25.—(Permanent alimony and maintenance).

Shri Rane: I beg to move:

In pages 11 and 12,

for clause 25, substitute:

"25. *Permanent alimony and maintenance.*—(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree for the termination of any marriage or at any time subsequent thereto, on application made to it for the purpose, order that the husband shall, while the wife remain chaste and unmarried, secure to the wife for her maintenance and support, if necessary, by a charge on the husband's property, such gross sum or such monthly or periodical payment of money for a term not exceeding her life, as, having regard to her own property, if any, her husband's property and the conduct of the parties, shall be deemed just.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1) it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the wife in whose favour an order has been made under this section has remarried or has not remained chaste, it shall rescind the order."

Shrimati Renu Chakravartty: I beg to move:

In page 11,

(i) in lines 40 and 41,

for "either the wife or the husband, as the case may be," substitute "the wife"

(i) in line 40,

omit "or his".

Shri Venkataraman: I beg to move:

In page 11,

(i) in the line 40,

omit "either";

(ii) in lines 40 and 41,

omit "or the husband as the case may be"; and

(iii) in line 42,

omit "or his"

Pandit K. C. Sharma: I beg to move:

In page 11,

(i) in lines 40 and 41,

for "either the wife or the husband, as the case may be",

substitute "the wife"; and

(ii) in line 42,

omit "or his".

Shrimati Sucheta Kripalani: I beg to move:

In page 11,

(i) in lines 40 and 41,

for "either the wife or the husband, as the case may be", substitute "the wife"

(ii) in line 42,

omit "or his".

Shri C. R. Iyyunni: I beg to move:

In page 11, line 41,

after "order" insert:

"except in the cases of decrees obtained by taking advantage of the provision contained in Section 13 sub-section (1) (ii)".

Shri Venkataraman: I beg to move:

In page 12,

for lines 11 to 15, substitute:

"(3) If the court is satisfied that the wife in whose favour an order has been made under this section has remarried or has not remained chaste, it shall rescind the order".

Pandit K. C. Sharma: I beg to move:

In page 12,

for lines 11 to 15, substitute:

"(3) If the court is satisfied that the wife in whose favour an

order has been made under this section has remarried, or that she has not remained chaste, it shall rescind the order."

Shrimati Renu Chakravarty: I beg to move:

In page 12, lines 12 to 15,

omit "or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock."

Shrimati Sucheta Kripalani: I beg to move:

In page 12, lines 12 to 15,

omit "or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock."

Shrimati Renu Chakravarty: I beg to move:

In page 12, lines 12 to 15,

for "or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock," substitute "or is leading an adulterous life."

Shrimati Sucheta Kripalani: I beg to move:

In page 12, lines 12 to 15,

for "or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock," substitute "or is leading an adulterous life."

Shri Bogawat: I beg to move:

In page 12,

after line 15, add:

"(4) The court may not grant maintenance to a husband unless the husband is a lunatic, an idiot, a leper or a crippled man and is

[Shri Bogawat]

in such a state that he is unable to maintain himself."

Shri Sadhan Gupta: I beg to move:

In pages 11 and 12,

for lines 37 to 44 and lines 1 to 10, substitute:

"25. *Permanent alimony and maintenance.*—(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by the wife, order that the husband shall, while the wife remains unmarried, pay to the wife for her maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the wife as, having regard to the husband's own income and other property, if any, the income and other property of the wife and the conduct of the parties, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the husband.

(2) If the court is satisfied that there is a change in the circumstances of the wife at any time after it has made an order under sub-section (1), it may, at the instance of the husband, vary, modify or rescind any such order in such manner as the court may deem just."

Clause 26.—(Custody of children)

Shrimati Renu Chakravartty: I beg to move:

In page 12,

after line 27, add:

"Provided that the mother shall have custody of the minor children up to the age of twelve except in cases where it is regarded to be morally harmful for the children to be in her custody or in case the mother is insane".

New Clause 26A

Shri Bibhuti Mishra: I beg to move:

In page 12,

after line 27, add:

"26A. In such hard cases where the parents of the child or children have no subsistence of maintenance or if they have subsistence of maintenance, are careless Government shall take full charge for imparting adequate education and looking after of the child or children.

It is also advisable for the Government to charge, from such parents who are in a position to pay, the costs incurred by the Government for the education and of looking after of their child or children."

Clause 28.—(Enforcement of, and appeal from, decrees and orders)

Shri Rane: I beg to move:

(1) In page 12, line 40,

add at the end:

"and on a decree of compromise under section 22A"

(2) In page 12,

after line 40, add:

"Provided further that every such appeal shall be instituted within ninety days after the decision appealed from shall have been pronounced, and the appellate court may, in its discretion for sufficient and reasonable cause, excuse delay and shall admit the appeal".

New Clause 28A

Shri Rane: I beg to move:

In page 12,

after line 40, insert:

"28A. *Rule making powers.*—The Central Government may by notification in the Gazette of India and subject to the condition of previous publication, make rules for the purpose of carrying into effect the provisions of this Act."

Mr. Chairman: All these amendments are now before the House.

Shrimati Sushama Sen: The lady Members, who preceded me, have spoken in details, and I agree with all what they said on clauses 24, 25 and 26. So, I will be brief in what I say. I know the time is short and I do not want to take up the time of the House. Since the hon. Minister of Law has given us an assurance that he will amend these clauses 24, 25 and 26....

Mr. Chairman: Order, order. So far the hon. Minister has not indicated anything on the point.

Shrimati Sushama Sen: Mr. Venkataraman said so. At least clause 24 must be amended. The Law Minister should give an assurance that he will amend this. We know his mind is open and he is going to amend this. It is most atrocious that a thing like clause 24 should be passed in the House. I would most earnestly request the Law Minister to reconsider this and amend it as soon as possible. As pointed out by Shri Venkataraman, this Bill must be passed today; otherwise it is not passed at all. In view of the fact that we agree to pass this clause 24 on this condition that it shall again be amended at the earliest opportunity, an amendment should be brought immediately. It is absurd to have such a clause as this.

I am also very much against clause 25 sub-clause (3). The chastity of women is referred to there. It should also be deleted because it will cause no end of the hardship for the women. The feeling has been expressed over and over again that women are economically dependent on men. Why put further hardship on them? It will defeat the very object of this Bill if you put in a clause of this kind. I do hope that the Law Minister will consider these things.

Regarding the custody of children, as my sister who just spoke, the mother is the proper guardian to take custody of the children and so I hope that these will be amended properly.

Shri C. R. Iyyunni: There are two amendments that I have tabled. One is 360; that is only a verbal amendment.

With regard to 362, I have to say something. There are various grounds on which a divorce can be effected—the various grounds are adultery, religious conversion, insanity, leprosy, and so on. My suggestion is that 'religious conversion' should not be a ground for payment of alimony. I cannot understand it. If a man is adulterous, it will go against his character. So also with regard to other matters. A man becomes insane. Supposing a man or woman has been insane, certainly it is very difficult to associate with him or her; so also in the case of leprosy. But in the case of conversion, I suggest that alimony need not be paid by the person who is the convert to the person who is not the convert. It may so happen that even if the order is passed a person who is converted may always be willing to live with the wife or with the husband as the case may be and in that case there will be the difficulty. The petition may say: 'I do not want to live with you'. So one may have to pay money. That is what is really going to happen. In England and other places like the United States if due to temperamental maladjustment or something like that something is done, there is no alimony at all. The woman does not want to live with the man or *vice versa*. There are instances where because a man snored, a woman had got rid of him. There are instances like that and in such cases the law does not say that you should pay alimony to the woman or man. Here it is a difference of opinion. Out of faith such a thing may happen. But should he or she pay alimony or maintenance to the other party?

According to the Constitution we are a secular State. Being a secular State, it is quite likely that a man may change from one religion to the other. The Government will not be interested in a matter like that. In such cases it is not proper and I request the Minister of Law to take this into consideration. After all, he does

[Shri C. R. Iyyunni]

not do anything wrong. It is simply penalising a man or a woman for the conversion; that is what it really comes to. There is no moral turpitude. A man simply changes because he feels that the religion in which he was does not suit him or he takes another view that somehow or other it is better and he goes away. Merely because he or she goes away, that person should not be penalised. I hope that the Law Minister will kindly look into the matter and I do not think there is any objection for him to accept it.

श्री विभूति मिश्र : कई बार ऐसा होता है कि जब पति पत्नी को या पत्नी पति को तलाक दे देती है और उन के कुछ बच्चे होते हैं तो देखने में आया कि न तो स्त्री और न ही पुरुष उन बच्चों की परवाह करने हैं और उन बच्चों का बहुत बुरा हाल होता है। मैंने देखा है कि जहाँ पर स्त्री और पुरुष में झगड़ा हो जाता है तो बच्चों की केयर कोई नहीं करता। जहाँ पर तलाक की प्रथा है वहाँ पर जो मेरा अनुभव है उस की बिना पर मैं आप को बता सकता हूँ कि स्त्री अपने बच्चों को छोड़ देती है और दूसरे पुरुष के यहाँ चली जाती है और उन बच्चों की देखभाल करने वाला कोई नहीं रह जाता है। जो ऐसा बेटा होता है उसको हमारी तरफ डगरूका बच्चा कहते हैं। तो ऐसे बच्चों की देखभाल के लिये मैंने एक एमेंडमेंट दी है और मैं चाहता हूँ कि ऐसे बच्चों की सरकार को खुद देखभाल करना चाहिये और अपने कब्जे में ले लेना चाहिये और उनको पढ़ाई वगैरह का प्रबन्ध करना चाहिये। इस के साथ ही साथ मैंने यह भी कहा है अगर बच्चे के पेरेन्ट्स उस खर्च को जो कि गवर्नमेंट उन बच्चों पर करती है उसको देने के काबिल हैं तो उन से यह खर्च भी वसूल करना चाहिये।

मैं पाटस्कर साहब से प्रार्थना करता हूँ कि वे कृपा करके मेरी इस एमेंडमेंट को स्वीकार कर लें।

Shri Nambiar: I strongly support the arguments put forward by speakers like Shrimati Renu Chakravartty and Shrimati Sucheta Kripalani and others that it is always wrong to give alimony to the husband. I know certain cases in Malabar where there are women who have already got the right to property under the Marumakkattayam Act. Under certain circumstances, certain marriages used to take place and when once the marriage takes place the boy misbehaves. Then the wife will have the necessity to divorce him. There are many cases like that (*Interruption*). When once the divorce is allowed, this boy who was considered to be a good fellow at the time of marriage misbehaves afterwards and will fall back upon this provision, will go to court and get a share of the wife's property, which she has already and will go away with that. It is very harmful if he is allowed to do so. I know many cases where even without this right to alimony the boys misbehave and they go to the court and put the wives on the dock and there has been a lot of civil litigation going on. Therefore, if this right is also given in the hands of these boys, then, it will be difficult for the womenfolk. What little progress we are contemplating here will be negated if this right is given. Therefore, I very strongly oppose this alimony clause because, I know from practical experience from a part of the country where the women have a right to property that it will create difficulties. That is why I am strongly against it.

Shri Sarangadhar Das: I am reminded of Kipling saying "the female of the species is more deadly than the male". That may be so. But, it is admitted by every man, whether in India or elsewhere, that the male is the stronger of the two and the male never bows down before the female

for protection and support. I am rather surprised that the House, that is supposed to be the repository of all wisdom, has put in this clause that a divorced husband can claim alimony and get it from the woman. This clause should be deleted from the Bill. That is all I have to say.

Mr. Chairman: I call upon the hon. Minister. He may be pleased just to

start and he may continue the reply tomorrow.

Shri Pataskar: Let us have it tomorrow. It may be taken that I have started and will continue tomorrow.

Shri S. S. More: Yes, we may have it tomorrow.

The Lok Sabha then adjourned at Half Past Ten of the Clock on Thursday, the 5th May, 1955.
